



Industrial Relations Claims

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27 July 2018

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

By email: eesbc@parliament.qld.gov.au

Dear Secretary,

RE: The Queensland Parliamentary Inquiry into Wage Theft

We are grateful for the opportunity to present the enclosed submission to the Parliamentary Inquiry into the Problem of Wage Theft.

It is only because of the protection of parliamentary privilege that the stories of these victims can be told.

We hope this submission highlights the reality of how tough it is for victims of wage theft to reclaim their stolen wages and move on after an often mentally distressing experience.

Everyone named in this submission, with the exception of one, [REDACTED] do not wish to have their name redacted, other than their contact details, in the hope that their stories can become public knowledge, such that it will result in less victims of wage theft.

Please redact any reference to [REDACTED] and her employer including where we attribute her quotes.

[REDACTED] does want to give evidence at a public hearing and to do so in public.

Regards

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Industrial Relations Claims is a member of the Supportah Network of independent consultants, communication professionals, mediators and lawyers. We are a private consultancy with no affiliation with any government agency.



INDUSTRIAL RELATIONS CLAIMS

SUBMISSION TO INQUIRY INTO

THE PROBLEM OF WAGE THEFT IN QUEENSLAND



Industrial Relations
Claims

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Table of Contents

1.	Who we are.....	4
2.	Purpose of this submission.....	4
3.	Summary.....	5
4.	The fundamental problem of wage theft - an unfair playing field.....	6
5.	The incidence of wage theft in Queensland.....	7
5.1	Our experience.....	7
5.2	Examples of callers we cannot help.....	7
5.3	We direct most callers to the Fair Work Ombudsman.....	8
6.	The impact of wage theft on workers and their families.....	10
6.1	Financial impact of wage theft.....	10
6.2	Financial impact of unpaid superannuation.....	11
6.3	Impact of wage theft on mental health.....	11
7.	The impact of wage theft on law abiding businesses.....	13
8.	The various forms of wage theft.....	14
	Case study #1 - [REDACTED].....	15
	Case study #2 - Kay Clifton & Carolyn Bridges.....	16
9.	The industries and workers most at risk.....	18
9.1	Backpackers, international students and migrant workers.....	19
9.2	Overseas workers on visas considered a priority by Fair Work Ombudsman..	21
9.3	Young workers.....	21
	Case study #3 - Aiden Martin.....	22
	Case study #4 - Alanna West.....	24
	Case study #5 - Tomy Wirawan.....	25
10.	The reasons why wage theft is occurring.....	27
10.1	Wage theft is not a crime.....	27
10.2	The chances of getting caught are remote.....	27
10.3	An expensive workplace watchdog that deliberately deflects calls for help.....	28
	Case study #6 - Kym Rake.....	29
10.4	The Fair Work Ombudsman has a policy of non-enforcement.....	30
10.5	The Fair Work Ombudsman lets most guilty employers off the hook.....	31
10.6	Unsustainable business models.....	32
10.7	Tougher penalties might not be enough.....	33
10.8	Community, industry and government attitudes.....	33

11.	What happens when a worker tries to recover stolen wages.....	35
11.1	It's up to workers to crunch the numbers.....	35
	Case study #7 - Thomas Ruscoe-Jones.....	35
11.2	Workers don't know what to do next.....	37
11.3	FWO mediation encourages workers to bargain away their stolen wages.....	38
11.4	The financial cost of launching legal action to recover stolen wages.....	38
	Case study #8 - Jamie Gardner-Hudson.....	40
11.5	'Running out the clock' a common tactic.....	41
	Case study #9 - Kasey Cockburn & Leanne Andrews.....	41
11.6	Pecuniary penalties are never awarded to the worker.....	44
11.7	Court orders don't always mean a worker will get paid.....	45
	Case study #10 - Brenton Larcombe.....	46
11.8	The Fair Work Ombudsman assists employers in court.....	47
12.	Recovering unpaid superannuation.....	47
13.	The role of Queensland Courts.....	49
13.1	Part 5A <i>Employment Claims in Magistrates Court Act 1921 (Qld)</i>	50
13.2	No equivalent s.475 of the <i>Industrial Relations Act</i> in the <i>Fair Work Act</i>	51
13.3	Fair Work Commission and wage theft disputes.....	51
14.	The effectiveness of unions.....	52
14.1	Hospo Voice.....	52
16.	Proposals.....	55
	Attachment	
	Thomas Ruscoe-Jones underpayment calculations.....	59
	Appendices	
	Appendix A - Case studies contacts.....	62
	Appendix B - Interview Kym Rake.....	63
	Appendix C - Interview Kay Clifton.....	66
	Appendix D - Interview Carolyn Bridges.....	68
	Appendix E - Interview Alanna West.....	70
	Appendix F - Interview Tim Dunne.....	72
	Appendix G - Interview Thomas Ruscoe-Jones.....	73
	Appendix H - Interview Eva Rankmore.....	75
	Appendix I - Interview [REDACTED].....	77
	Appendix J - Interview Tomy Wirawan.....	80
	Appendix K - Interview Jamie Gardner-Hudson.....	82
	Appendix L - Interview Aiden Martin.....	86
	Appendix M - Interview Leanne Andrews.....	89
	Appendix N - Interview Kasey Cockburn.....	91

1. Who we are

Industrial Relations Claims is a private advocacy firm that partners with Fair Work Employment Lawyers and Worker Law to offer affordable justice to workers involved in industrial relations disputes through mediation and litigation in tribunals and courts.

We deal with a range of workplace issues, including unfair dismissal, general protections claims, discrimination, sexual harassment, and wage theft.

In the past two years, our small team has helped recover \$1.8 million in stolen wages for our clients, ranging in individual amounts of \$6,000 up to \$80,000.

We also provide industrial officer services to the Nurses' Professional Association of Queensland Inc (NPAQ).

We work on a low-cost model, charging clients one week of their wages upfront, in addition to a small percentage of any monies recovered.

We conduct forensic wage analysis, send letters of demand, assist the team at Worker Law to prepare and file statements of claim, as well as full trial litigation.

2. Purpose of this submission

We hear it every day - the hurt, the frustration and the suffering caused by wage theft.


It affects real people, ordinary Queensland workers, of all ages, in almost all industries.

In this submission, we wanted to give some of those workers a voice - so they could tell their stories to the committee, in their own words, about how wage theft has impacted their lives, and about how difficult it has been to recover their money when the system has been stacked against them.

Each worker in this submission is willing to appear before the committee to give a first hand account of their experience.

Their stories could not be told without the protection of parliamentary privilege.

It is our hope that after hearing the plight of these workers, and after giving serious consideration to our proposals, that the committee recommends significant changes to current laws and that both state and federal governments then work together to ensure fairness and justice for all Queensland workers who have their wages stolen.

Miles Heffernan
Director of Litigation
Industrial Relations Claims
07 3059 6070


3. Summary

Wage theft is currently a significant problem in Queensland, as it is in most parts of Australia, with some sectors and cohorts of employees particularly affected. Wherever there are vulnerable workers with limited knowledge of their rights, there will be greedy employers ready and willing to exploit them.

The widespread wage theft that exists today had its genesis in legislative changes that happened more than a decade ago, and has been allowed to flourish thanks to an ineffective workplace watchdog, and inadequate penalties for employers who are caught doing the wrong thing.

The employer is always going to win when the Fair Work Ombudsman sets its own goal of enforcement at “no more than 10%.”

Workers who dare question their boss about underpayments risk adverse action, including ridicule, bullying and harassment, hours stripped from their roster, and in most cases, dismissal.

Many workers cannot afford to launch legal action to recover stolen wages, while those who can find the court system costly and difficult. Those who attempt to recover lost superannuation through the Australian Tax Office have an even harder time.

It is rare for workers who have had their wages stolen to ever recover the full amount they are owed - if they manage to recover anything at all.

The impact of wage theft on workers can be devastating, and not just financially. The pressure of not having enough money to pay bills, or the daunting prospect of commencing legal action, can severely impact a worker's mental health leading to stress, anxiety and depression.

Legitimate businesses that do pay correct wages and entitlements stand no chance of competing against those that don't.

Widespread wage theft will continue to occur in Queensland until both the state government and the federal government make significant changes to legislation, including the way it is policed and punished - and workers will continue to lose financially, and suffer mentally and emotionally, until there is an easier and more cost effective way to recover what was stolen from them.

It is also clear that all workers need a better understanding of their workplace rights and obligations.

Finally, unions and other employee organisations need to play a greater role in advocating for victims of wage theft, mobilising and organising workers in particular industries, and exposing businesses that steal from their workers.

“That’s something I find with governments - they’re either all for the workers and not the employers, or they’re all for the employers and not for the workers - and it causes this imbalance all the time.”

- Carolyn Bridges¹
Former medical centre receptionist ripped off \$37,000

¹ Appendix D (2018) Interview Carolyn Bridges

4. The fundamental problem of wage theft - an unfair playing field

Currently in Queensland, under s.398 of the *Criminal Code 1899 (Qld)*², a worker caught stealing from their employer - "Stealing as a Servant" - faces a maximum penalty of 10 years imprisonment (five years more than for other stealing offences). In addition, the crime normally attracts a criminal conviction.

Yet an employer who steals wages from an employee in the private sector does not face criminal prosecution.

This is fundamentally an unfair playing field, weighted heavily in the employer's favour, and offers no deterrence, and allows them to commit wage theft with impunity.

"Even shoplifting is a criminal offence. If you steal \$5 worth of goods, it's a criminal offence - yet when bosses steal wages - they can steal tens of thousands of dollars from people - and get away with it."

- Tomy Wirawan³
Law graduate ripped off \$18,000

"If I stole a \$1,000 Milwaukee plumbing tool kit, I'd be getting in a [REDACTED], but they were taking my money - \$8,000 was stolen from me - that's a lot of money for me - and nothing happens to them. They rock-on until they get the next apprentice and do the same thing to him."

- Aiden Martin⁴
Apprentice plumber ripped off \$8,000

"If I stole from him - the way he stole the money that was supposed to be going into my super - if I did that to him, I'd be in jail."

- Kym Rake⁵
Former waste truck driver ripped off \$135,812

"They're getting away scot free, and if they've done it once, they're going to continue to do it, and I think if the worker can be criminally sentenced to a prison term, then so should an employer."

- Carolyn Bridges⁶
Former medical centre receptionist ripped off \$37,000

² Queensland Government (1899) s398 of the Criminal Code
http://www5.austlii.edu.au/au/legis/qld/consol_act/cc189994/s398.html

³ Appendix J (2018) Interview Tomy Wirawan

⁴ Appendix L (2018) Interview Aiden Martin

⁵ Appendix B (2018) Interview Kym Rake

⁶ Appendix D (2018) Interview Carolyn Bridges

5. The incidence of wage theft in Queensland

Wage theft is so prevalent in some industries, that it is now considered 'the norm'.

According to the 2017 *Report into Corporate Avoidance of the Fair Work Act*⁷, it is estimated that nationwide, one in two hospitality workers is being illegally paid, with similar figures available for the retail, hair & beauty and fast food sectors.

There is no reason to think rates of wage theft are any different in Queensland.

There is also evidence that underpayments are common in the farming and fruit & vegetable picking sectors in Queensland, with some overseas workers reporting being paid \$5 an hour or less.⁸

However, it is wrong to think that these are the only industries affected.

It is our experience that wage theft occurs in almost every industry, including medical, legal, transport, trades, construction and childcare.

5.1 Our experience

Industrial Relations Claims receives between 50 and 80 calls a week (more than 3000 calls a year) from people wanting assistance with stolen wages.

These inquiries involve all forms of wage theft, including workers being paid below award rates, unpaid penalties and overtime, unpaid superannuation and redundancies, improper setting off of allowances, refusal to allow breaks, and unpaid work experience.

Although we have helped recover \$1.8 million in stolen wages for our clients in the past two years, the reality is that we can only help a small fraction of people who contact our firm.

The majority of callers are chasing amounts of money that do not make it commercially viable for us to take on their case (usually less than \$10,000), and then there are others who simply cannot afford to pay for our services, although we do sometimes take on cases pro bono.

All too often we are forced to deliver the bad news to ripped off workers that legal action is not a viable option, because taking their matter to court will cost more than the amount they are trying to recover - and employers know that.

5.2 Examples of callers we cannot help

Jamie Gardner-Hudson contacted our office on Thursday 5 July 2018 requesting assistance to recover part of \$40,000 he was underpaid while working at the independent BP service station on [REDACTED] between 2007 and 2014.

⁷ Commonwealth of Australia (2017) Senate Standing Committee on Education and Employment *Corporate Avoidance of the Fair Work Act*
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/AvoidanceofFairWork/Report/c06

⁸ Berg & Farbenblum (2017) *Wage Theft in Australia - Findings of the National Temporary Migrant Work Survey*
<http://apo.org.au/system/files/120406/apo-nid120406-483146.pdf>

Unfortunately, Jamie could not afford our services, and due to the six year limitation on recovering stolen wages, he is now only eligible to claim for two years of the underpayments.

"It's a load of [REDACTED] really - I worked those hours, I busted my arse for that company, and I got screwed over in the end."

- Jamie Gardner-Hudson⁹
Former service station attendant ripped off \$40,000

Another caller we were unable to help was gyprocker Tim Dunne, who also called our office on Thursday 5 July 2018.

Mr Dunne was looking for help to recover \$3,600 that he said he was owed by sub-contracting company [REDACTED] for work he had done on the ACU building site at Nudgee.

"I got a text on Saturday morning to not go to work. And then when I went into work on the Monday to hand in my invoice - they text me back later that day - 'oh mate we've gone bankrupt - the company has gone into voluntary liquidation'.

"All I know is the owner of [REDACTED] lives in a big house - and he's got money - I'm sure of it.

"It's not just me, they haven't paid anyone. There's about 200 grand owing."

- Tim Dunne¹⁰
Tradesperson ripped off \$3,600

5.3 We direct most callers to the Fair Work Ombudsman

The best that we can do for people like Mr Dunne and Mr Gardner-Hudson is to direct them to the Fair Work Ombudsman, even though it is our experience that they have little chance of getting any effective help there.

We are constantly told stories by workers that the FWO either:

- Outright rejects requests for assistance
- Fails to return calls or follow up requests for assistance
- Tells workers that it is powerless to recover stolen wages
- Refuses to commence litigation against recalcitrant employers
- Tells workers that their only option is to engage their own legal representation
- Advises workers to sort out underpayments themselves by taking it up directly with their employer

⁹ Appendix K (2018) Interview Jamie Gardner-Hudson

¹⁰ Appendix F (2018) Interview Tim Dunne

"They were useless, absolutely useless, and of no benefit whatsoever. They weren't interested in advocating on our behalf whatsoever."

"They just said at the end of the day, we can't force him to pay it, and you may have to engage legal services, and I thought, isn't that what the government department is for?"

- Kay Clifton¹¹
Former medical centre manager ripped off \$45,000

"They're a barkless dog. That's how we found it. They were a barkless dog. They are useless - they really are."

- Carolyn Bridges¹²
Former medical centre receptionist ripped off \$37,000

"By my calculations, I was owed up to \$40,000, and yeah, they weren't interested in helping me. They just want to sit around and sing, 'Kumbaya', and that's about it."

- Jamie Gardner-Hudson¹³
Former service station attendant ripped off \$40,000

"They gave us advice and said that we had a right to bring it up with the boss and that we should try and come to an agreement - try and meet up in person about it, and have a conversation, but my boss wasn't prepared to do that."

- Alanna West¹⁴
Apprentice hairdresser ripped off \$22,415

"He said, 'there is nothing that we can do, if you've made an inquiry, you've just got to wait in the line until we get to you' - and I still haven't heard from them, and it's been like, nearly three years now."

- Kym Rake¹⁵
Former waste truck driver ripped off \$135,812

¹¹ Appendix C (2018) Interview Kay Clifton

¹² Appendix D (2018) Interview with Carolyn Bridges

¹³ Appendix K (2018) Interview Jamie Gardner-Hudson

¹⁴ Appendix E (2018) Interview with Alanna West

¹⁵ Appendix B (2018) Interview with Kym Rake

6. The impact of wage theft on workers and their families

6.1 Financial impact of wage theft

Wage theft can have a significant impact on workers, the most obvious being the immediate financial loss, and pressure to pay for basic things like rent, bills and groceries - which cannot be underestimated.

Workers who are underpaid are often forced to rely on family members simply to get by.

A recent case before the Federal Circuit Court involved a delivery driver who worked at a 'Pizza Hut' outlet on the Gold Coast, who was ripped off under a sham contract, and paid a flat rate of \$16 an hour.

The worker was an Indian man in his 20s.

"According to the evidence, he was the sole breadwinner for he and his wife and was responsible for their daily living expenses, rent, groceries and his wife's tuition fees.

"Partly as a result of being underpaid, he needed to borrow about \$1,500 from his cousin in Melbourne and about \$20,000 from his father in India, which he says was culturally shameful and embarrassing. (The driver's) evidence was that he was constantly anxious and stressed about their low bank balance and at time felt pressured and humiliated."

- Judge Michael Jarrett¹⁶
Federal Circuit Court

"I nearly ended up on the street. If it wasn't for my father, because at the time I was going through a divorce, and a property settlement, and because I had lost my job, I had to give up my townhouse, and if it hadn't been for my father, who propped me up financially, I would have been on the street."

- Kay Clifton¹⁷
Former medical centre manager ripped off \$45,000

"It put a really big strain on me. I ended up getting myself into debt with my partner's family at the time because I couldn't afford to pay rent every week - so I ended up having to move home for a while to get back on my feet and pay everyone off."

- Alanna West¹⁸
Former hairdresser ripped off \$22,415

¹⁶ FWO (2018) Media release \$216,700 in penalties after Pizza Hut franchise engages in sham contracting <https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180615-skyter-penalty>

¹⁷ Appendix C (2018) Interview Kay Clifton

¹⁸ Appendix E (2018) Interview Alanna West

"I was screwed basically - because I had to take out a loan to get married, none of the banks would help me - it wasn't that I had a bad credit history, it was because they couldn't see that I was getting regular wages paid into my bank account - because I was being paid cash in hand."

- Jamie-Gardner-Hudson¹⁹
Former service station attendant ripped off \$40,000

"My Nan was having to give me money to pay my phone bill, to put fuel in my ute, pay my insurance for my car - yeah my Nan had to help with everything, and she's on the pension."

- Aiden Martin²⁰
Apprentice plumber ripped off \$8,000

"My son's education rides on this money. I've got a special needs son, he's got autism, and he goes to a very expensive school - it's 300 bucks a week - and because I didn't get paid for those weeks - those payments didn't go through."

- Tim Dunne²¹
Tradesperson ripped off \$3,600

6.2 Financial impact of unpaid superannuation

Unpaid compulsory superannuation contributions are a particularly insidious form of wage theft because of the devastating long-term financial impact it has on employees.

Not only does the worker miss out on regular contributions, but they also lose the investment returns on those contributions, and the compounding interest that results.

Industry Super Australia estimates that a \$2,000 underpayment can grow to a \$24,000 shortfall in investment returns by retirement. The result of this shortfall is estimated to cost an extra \$100 million in age pension costs putting pressure on the entire community.²²

Make no mistake, employers who don't pay super are stealing from their worker's retirement.

6.3 Impact of wage theft on mental health

Our clients who have been the victims of wage theft often report feeling extreme stress, frustration, anxiety, and even depression.

They first have to deal with the reality that they have been cheated or robbed by their boss, often after having put their heart and soul into a business, and then they are left to manage the financial pressure that results.

¹⁹ Appendix K (2018) Interview Jamie Gardner-Hudson

²⁰ Appendix L (2018) Interview Aiden Martin

²¹ Appendix F (2018) Interview Tim Dunne

²² Industry Super Australia (2017) Media release *Unpaid super costs workers \$24,000 by retirement*

<http://www.industrysuperaustralia.com/media/media-releases/unpaid-super-costs-workers-24000-by-retirement-and-government-foots-an-extra-100m-age-pension-bill-each-year/>

Those who try and recover underpayments risk adverse action at work, including bullying and harassment, and in most cases, they end up losing their job.

They may even face threats of counter legal action, and are often forced to endure a lengthy drawn-out court process if the employer fights the claim, or tries to stall or frustrate the matter.

"It did cause me a lot of anxiety, and stress, and I would even go so far as to say depression. You're just left wondering how on earth you are going to pay your bills and how you are going to live when you've got no money."

- Kay Clifton²³
Former medical centre manager ripped off \$45,000

"It was very stressful. It put me in a dark place where I didn't want to be. I even turned to my wife and I was in tears and I was so upset, and I said, I'm not sure if you still want to marry me."

- Jamie Gardner-Hudson²⁴
Former service station attendant ripped off \$40,000

"It caused so much stress, and I'm sure it didn't help mine and Eva's relationship - coming home from work every day upset and pissed off knowing that you've been ripped off and knowing there is nothing that you can do about it. And then, for the 12 months that we were fighting them - it was really stressful with the threats hanging over us - because they said they were going to sue me and I was going to end up with nothing - it wasn't a fun experience."

- Thomas Ruscoe-Jones²⁵
Service manager ripped off \$261,715

"It was a very stressful time because we'd think, yes it's all settled, that's it, good oh, and then nothing. We reached the point where we thought we would never be paid."

- Carolyn Bridges²⁶
Former medical centre receptionist ripped off \$37,000

"I nearly had a nervous breakdown over it all - because it was just so stressful with the whole situation - I couldn't function."

- Leanne Andrews²⁷
Former hospital admin staff ripped off \$5,380

²³ Appendix C (2018) Interview Kay Clifton

²⁴ Appendix K (2018) Interview Jamie Gardner-Smith

²⁵ Appendix G (2018) Interview Thomas Ruscoe-Jones

²⁶ Appendix D (2018) Interview Carolyn Bridges

²⁷ Appendix M (2018) Interview Leanne Andrews

“With all the effort that I had to go to to retrieve my money and all the hard work I put into the apprenticeship, for it to be taken off me because they didn’t want to pay me an extra \$8 an hour - I felt like [REDACTED] - it was appalling. How I felt for those few months - I wouldn’t wish it upon anyone.”

- Aiden Martin²⁸
Apprentice plumber ripped off \$8,000

7. The impact of wage theft on law abiding businesses

Wage theft creates an unfair playing field for law abiding businesses who do pay their staff correct wages and entitlements.

Afterall, how can an operator of a small business possibly compete against another operator down the road who is not paying correct wages and entitlements - particularly in sectors where competition is fierce and margins small?

Businesses engaged in wage theft have greater scope to offer cheaper prices than their competitors, they can afford to open on public holidays, and they have a better chance of pocketing a bigger profit.

And a public holiday surcharge is no guarantee that a café or restaurant is passing on that extra money to staff in the form of correct wages and entitlements.

Judge Salvatore Vasta noted the unfair advantage wage theft can give a business when he recently imposed penalties of \$192,780 on a Brisbane 7-Eleven operator - saying the exploitation of workers gave the 7-Eleven a leg up against legitimate businesses that it did not deserve.

“Not only is it blight upon the system for workers to be exploited this way, it also enables a business such as that of the Respondents to unfairly profit.”

- Judge Salvatore Vasta²⁹
Federal Circuit Court

In another case involving a Gold Coast restaurant owner who underpaid overseas workers \$60,000 in just four months, Judge Vasta highlighted the true extent of the competitive advantage wage theft gave the business.

“If one extrapolated that to the course of a year, it would mean that a business such as the ones being run by the First Respondent and the Second Respondent, would have a saving to them of about \$180,000.

²⁸ Appendix L (2018) Interview Aiden Martin

²⁹ FWO (2018) Media Release \$192,780 in penalties for Brisbane 7-Eleven outlet

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180605-s-and-a-enterprises-penalty>

“When one is looking at a small business, the temptation is great that such a saving to them would give them a competitive edge of all the other businesses in their area.”

- Judge Salvatore Vasta³⁰
Federal Circuit Court

Writing an opinion piece for *The Guardian*, Sean Minter and Kirsten Baker, who run the ‘Finders Keepers Cafe’ in Hawthorn in Melbourne, explained just how unfair wage theft is on their business.

“How can we compete with those paying a flat \$18-\$20p/h cash? On top of the (casual) \$24.41 p/h weekday and \$29.30p/h weekends we pay, there’s also additional super, WorkCover and PAYG tax we pay. We can’t afford to open on public holidays.”

“It makes customers think we are charging too much when we are simply charging what we need to ensure that our staff are paid and our kids are fed.”

- Sean Minter and Kirsten Baker.³¹
Cafe owners

In the same article, Minter and Baker said that in four years, they had not hired one person who had previously been paid the correct award rate.

It is worth noting that the couple also said they have had trouble hiring staff, because many workers want to be paid in cash so they can still claim welfare.

“In some instances the problem also comes back to the employees. We have had staff leave and work down the road because we won’t pay cash and they want to claim additional Centrelink benefits. You can’t have it both ways.”

- Sean Minter and Kirsten Baker
Cafe owners

8. The various forms of wage theft

Our firm has come across many different forms of wage theft, including:

- Hourly rates less than the prescribed minimum rates of pay
- Failure to pay penalty rates, overtime and allowances
- Refusal to allow breaks

³⁰ FWO (2018) Media Release \$284,000 in penalties after “heinous” conduct at Gold Coast restaurant
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171019-samurais-paradise-penalty>

³¹ The Guardian (2018) *As cafe owners we know that wage theft is rife but there is still no excuse for it*
<https://www.theguardian.com/commentisfree/2018/may/19/as-cafe-owners-we-know-that-wage-theft-is-rife-but-there-is-no-excuse-for-it>

- Unpaid superannuation
- Refusal to allow leave
- Inappropriate deductions from wages
- Cash-back schemes
- Work performed for cash 'off the books'
- Sham contracting
- Unpaid "work experience" or "internships" and "volunteering"
- Commission-only arrangements
- Phoenixing
- Setting off one allowance for another

CASE STUDY #1

[Redacted text block containing the details of Case Study #1]

“Apparently the firm, they paid everything out to him, instead of paying Kay and I our long service and redundancy and holidays - instead of it being paid to us, it was paid to him, and he was the one that held on to the money, and you know, just didn’t want to pay.”

Kay couldn’t understand why [REDACTED] just didn’t just hand over the money.

“He demanded from the old owners our pay. Well, he said to them, ‘you pay me, and I will pay Kay and Carolyn’, and stupidly they did - and he held onto the money.

“This guy is an absolute snake. And he says he was caught in the middle, I mean, come on! You’ve taken the money that you shouldn’t have - you’d just pay it back wouldn’t you? - anyone else would.”

Kay said she and Carolyn contacted the Fair Work Ombudsman, but were told it couldn’t help.

“They just said at the end of the day, we can’t force him to pay it, and you may have to engage legal services, and I thought, isn’t that what the government department is for?

“And he must have known that, because he wasn’t worried by the threat of Fair Work at all. He just sort of basically thumbed his nose at us.”

As the dispute dragged on for months, Carolyn described a feeling of helplessness.

“People in our situation don’t know where to turn. They go to the Fair Work Ombudsman who is useless.

“People don’t know what to do, so they give up. My husband said to me, ‘he wants you to give up, he thinks this is all going to be too much stress for you’, because there were days when I would say, ‘I just can’t cope with this anymore, this back and forth’ - you know, and he said, ‘that’s exactly what he wants - he wants you to give up and then he’s pocketing all those entitlements’.”

Kay and Carolyn contacted Industrial Relations Claims (IRC) who calculated the workers were owed close to \$80,000.

[REDACTED] refused all demands to pay, incredibly trying instead to negotiate a cents-in-the-dollar deal with money that should never have been in bank account in the first place.

Fair Work Employment Lawyers made preparations to file a Statement of Claim in the Federal Circuit Court, but during pretrial negotiations, [REDACTED] had a change of heart and agreed to pay Kay \$40,000 and Carolyn \$30,000.

Carolyn said she suffered enormous stress during the six months it took to recover the money. She is upset that she was left out of pocket pursuing her wages and entitlements.

“To get the money that I was owed, it cost me \$7,000 - that’s what I personally paid to Miles’ company - because without paying that, I wouldn’t have got anything. But Kay was something like \$10,000 - but why should we have to pay for what was rightfully ours? It did get our noses out of joint, if you know what I mean?”

Kay said that if she didn’t pay for expert advice, she would have ended up with nothing.

"We would never have seen it, we would never have got the money. He wasn't interested in paying us back - he was a real [REDACTED] to be honest."

Kay was forced to borrow money from her father who is on a pension, just to survive. She said she suffered stress, anxiety and depression as a result of the wage theft.

"I'm very bitter, I'm very bitter. And it's taken a bit to move on. And having given 110 percent to a business, I now have a new job, I would never ever commit myself to a business like that again, and it's just really soured the whole experience. I wish I could have retired if I could afford to."

Carolyn believes [REDACTED] should have been charged with stealing.

"I want to see the employer criminally charged, and jailed - because if he's done it to one person, he's got no scruples, and he's going to do it to the next and the next and the next."

Kay and Carolyn's case raises a number of issues:

- This was a case of blatant theft by an employer of the employees' money - he was a crook
- The ease with which the employer was able to refuse to hand over the money
- The workers received no assistance from the FWO
- The stalling tactics used by the employer to discourage the workers continuing with their claim
- The only option for the workers was to engage help from industrial relations experts
- The workers were left out of pocket pursuing money that they were rightly entitled to
- The workers did not recover the full amount they were owed
- The enormous impact the wage theft on both workers financially, mentally and emotionally
- The employer continues to operate without penalty or a black mark against his company's name

9. The industries and workers most at risk of wage theft

In Queensland, hospitality, food services, retail, farming and fruit & vegetable picking industries are rife with underpayments because they create "a perfect storm" for exploitation.

The "wage theft recipe" is simple:

- The insecure nature of the work
- High numbers of migrant workers and young people
- Staff already being paid low wages
- People desperate for the work
- A lack of knowledge of workplace rights
- Absence of strong unionisation

According to a 2017 survey of 624 hospitality workers by the United Voice Union - 76% were being underpaid.³²

³² United Voice Union (2017) *Hospo Wage Theft Investigation*

The Fair Work Ombudsman describes the hospitality industry as “high risk” for wage theft.

A recent audit of restaurants and cafes in Fortitude Valley by the FWO found that more than half (44 out of 73) were underpaying workers and/or not keeping accurate employment records or providing pay slips.³³

9.1 Backpackers, International students and migrant workers

Workers from overseas who find jobs in Queensland are over represented in wage theft complaints.

A lack of knowledge of their workplace rights, along with threats of visa cancellations, and in the case of backpackers - the need to earn money to fund ongoing travel, make them particularly vulnerable to exploitation.

The November 2017 *Wage Theft in Australia*³⁴ study found that underpayments among backpackers, migrant workers and international students were “endemic” and “severe”.

The survey of 4,322 people who had worked in Australia on temporary visas found:

30% percent of participants earned \$12 an hour or less (almost half the minimum wage)

While the survey was nationwide, it is particularly relevant to Queensland because of the large number of backpackers and migrant workers employed in the fruit & vegetable picking and farming industries in the north of the state.

In fact, the study found that workers in these sectors were the worst paid.

Belgian backpacker Laurent Van Eesbeeck spent four months working as a fruit picker on eight different farms across Queensland, and described the experience as a “modern form of slavery”.

“I think my first job, I got \$10 for two or three hours work. When I went picking strawberries, I think I averaged \$60 a day before tax for eight hours of hard work under the sun.”

- Laurent Van Eesbeeck³⁵
Belgian backpacker

According to the study:

- 15% of workers in fruit & vegetable picking and farming were paid \$5 an hour or less, and 31% earned \$10 an hour or less
- 28% of workers in cafes, restaurants and takeaway food shops were paid \$12 an hour or less
- 20% of workers in convenience stores and petrol stations earned \$10 an hour or less
- 56% of cleaners were paid \$15 an hour or less

³³ FWO (2018) Media release *FWO’s Food Precincts campaign returns \$471,904 in wages owed to hospitality workers*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20180711-food-precincts-mr>

³⁴ Berg & Farbenblum (2017) *Wage Theft in Australia - Findings of the National Temporary Migrant Work Survey*
<http://apo.org.au/system/files/120406/apo-nid120406-483146.pdf>

³⁵ SBS (2017) ‘I was bullied and underpaid’ One in three backpackers paid half minimum wage
<https://www.sbs.com.au/news/i-was-bullied-and-underpaid-one-in-three-backpackers-paid-half-minimum-wage>

Last year, Gold Coast restaurant owner Shigeo Ishiyama was penalised \$284,000 for underpaying nine Japanese workers on 417 working holiday visas a total of \$59,080 with flat rates of between \$8 and \$11 for all hours worked.³⁶

Also last year, the Fair Work Ombudsman found a dozen workers at a Fortitude Valley restaurant, including a number of visa holders from Columbia, were being paid a flat rate of \$20 for all hours worked, well below award minimums.³⁷

The FWO has commenced legal action against the operators of two Miel Container gourmet burger outlets in the CBD and Sunnybank, after they allegedly underpaid eight South Korean nationals on various visas a total of \$155,000 with flat rates of between \$10 and \$16 for all hours worked.³⁸

In January, Steven Chung, the former manager of the Oliver Brown chocolate cafe on the Gold Coast, was penalised \$27,200 for underpaying 12 employees \$24,575. Seven of the workers were from overseas on various visas and were paid flat rates of between \$10 and \$16.48 an hour. Chung said he did it to see what he could “get away with”.³⁹

According to the 2017 *Wage Theft in Australia*⁴⁰ study, overseas workers are also vulnerable to threats of visa cancellations, with some employers even confiscating passports, and others demanding cash deposits of up to \$1,000 to secure jobs.

112 respondents to the survey said they had been asked to pay money back to their employer in cash after receiving their wages.

One such illegal cash-back scheme was exposed last year when the operators of a Coffee Club franchise at Nundah were penalised \$180,000 for making an overseas worker pay back \$18,000 from his wages, by threatening to cancel his visa if he refused.

Judge Michael Jarrett said the case highlighted the vulnerability of overseas workers who want to live and work in Australia.

“He could not leave his employment because if he did so he would breach a condition of his visa and his ability to remain in Australia would be seriously compromised. He was effectively working for nothing.”

- Judge Michael Jarrett⁴¹
Federal Circuit Court

³⁶ FWO (2017) Media Release *\$284,000 in penalties after “heinous” conduct at Gold Coast restaurant*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171019-samurais-paradise-penalty>

³⁷ FWO (2017) Media Release *Young workers, visa holders back-paid more than \$70,000 by Brisbane businesses*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171013-brisbane-recoveries-mr>

³⁸ FWO (2017) Media Release *Brisbane burger outlet operator allegedly exploited young overseas workers*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/november-2017/01112017-miel-container-litigation-mr>

³⁹ FWO (2018) Media Release *Chocolate cafe manager penalised \$27,000 for exploiting overseas workers*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/january-2018/20180116-oliver-brown-soul-penalty>

⁴⁰ Berg & Farbenblum (2017) *Wage Theft in Australia - Findings of the National Temporary Migrant Work Survey*
<http://apo.org.au/system/files/120406/apo-nid120406-483146.pdf>

⁴¹ FWO (2017) Media Release *Former Brisbane Coffee Club franchisee penalised over unlawful cash-back scheme*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/june-2017/20170619-coffee-club-penalty>

Also last year, two British backpackers who needed to complete 88 days of regional work to be eligible to stay in Australia for a second year on their 417 working holiday visas were underpaid for work they did on a far north Queensland crocodile farm.⁴²

9.2 Overseas workers on visas considered “a priority” by the Fair Work Ombudsman

It is worth noting that the Fair Work Ombudsman considers investigating the exploitation of overseas workers in Australia a priority, with almost half of litigations in 2016-17 involving a temporary working visa holder, even though such visa holders represented just 6.5% of the Australian workforce.⁴³

The previous year, the figure was even higher - 76% of FWO litigations involved visa holders.⁴⁴

This policy is evidenced by the high number of investigations and litigations involving visa holders outlined above.

The FWO’s disproportionate allocation of resources to one area of exploitation has had the unintended consequence of allowing employers of Australian nationals to go largely unchecked.

Just as visa holders can be considered vulnerable workers in need of protection, so it can be argued are plenty of Australian workers who also suffer exploitation.

This submission provides such examples - case study after case study of vulnerable workers all refused any meaningful assistance from the Fair Work Ombudsman - perhaps simply because they were not visa holders, and therefore not considered “a priority”.

The FWO should protect all workers in Australia equally - and it doesn’t.

Further, we believe the Department of Immigration and Border Protection should play a role in protecting visa holders who are the subject of wage theft, by guaranteeing that they won’t be adversely affected if their boss has enticed or intimidated them into contravening the conditions of their visa.

9.3 Young workers

Young workers are particularly vulnerable to exploitation, because they are often keen to get their foot-in-the-door, whether it be their first casual job, an apprenticeship, or their first paid employment after graduating college or university.

In addition, many young people are not aware of their workplace rights, and even if they are, they often feel powerless to speak up or challenge their employer about underpayments.

“They made me feel like I was the smallest person in the world and they were the biggest people. They made me feel tiny - and that I was useless - and that I didn’t have any say in what was going on.”

- Alanna West⁴⁵
Former apprentice hairdresser ripped off \$22,415

⁴² FWO (2017) Media Release *Backpackers snap-up back-pay from far north Queensland croc farm*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170913-fnq-crocodile-farm-mr>

⁴³ FWO (2017) Annual Report 2016-17

⁴⁴ FWO (2016) Annual Report 2015-16

⁴⁵ Appendix E (2018) Interview Alanna West

Last year, the Fair Work Ombudsman found that nine young waiters (some as young as 15 years-old) who were working at a Graceville outlet were being underpaid with rates of between \$12 and \$20.⁴⁶

The following three case studies illustrate just how easily young Queenslanders can have their wages stolen by their employer.

CASE STUDY #3

AIDEN MARTIN - APPRENTICE PLUMBER RIPPED OFF \$8,000

After completing six weeks of unpaid work experience with ██████████ based at ██████████ 21 year-old Aiden was offered a plumbing apprenticeship with the company. Two weeks after commencing work, Aiden checked the Fair Work Ombudsman website and discovered he was being underpaid. He was receiving \$11.67 an hour when he should have been paid \$19.07 an hour.

"The fact that they were charging me out as a fully qualified tradesman, at \$90 an hour, and I was only seeing \$11 of that, and the fact that I was putting in the hard yards every day - it was pretty draining - it was hard to keep any form of positive relationship with those guys."

Aiden decided not to approach his bosses ██████████ about the underpayments until after he had completed his three month probation period.

"I walked into the shed and ██████████ was like, 'how long you been working for us now?', and I said, 'ah, just over three months,' and he said, 'ah, well you must be finished your probation'. I asked if there was any paperwork to fill out and he said there wasn't, and he said, 'you're one of the family now', those were his exact words - they've stayed in my mind ever since."

About a week after being told his probation period was over, Aiden asked to have a meeting with ██████████.

"During that meeting I told them that I wasn't being paid my correct legal award, and they said, 'look we'll go talk to ██████████', which is ██████████ wife who is in charge of all the financials for the company."

"They said, 'we'll go talk to ██████████ and come back with a figure for you', - and before ██████████ could finish saying that, I said, 'mate, there's no figure to come to - I'm not asking for anything more and I'm not asking for anything less, I'm just asking for what I'm legally entitled to - what you have to pay me'."

"And ██████████ said, 'is this the avenue you want to go down?' and I said, 'yeah it is', I said, 'I'm 21, that's what I'm supposed to be on - that's what I'm going to get'."

"And he said, 'we'll have another meeting soon' - so I hassled them a few weeks after that, and they sat me down for another meeting, and that's when they sacked me."

Despite previously being told his probation period had ended, and that he was 'one of the family' - Aiden's bosses suddenly felt he wasn't up to the job.

⁴⁶ FWO (2018) Media Release *Young workers, visa holders back-paid more than \$70,000 by Brisbane businesses*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171013-brisbane-recoveries-mr>

"I said, 'on what grounds am I being fired?' - and [REDACTED] said - because [REDACTED] was the person in charge of my apprenticeship - [REDACTED] said, 'it's the end of your probation, and unfortunately we're not going to keep you on'.

"And I looked at [REDACTED], and I said, [REDACTED], didn't you tell me that my probation was over and I was part of the family?', and he said, 'yeah but we didn't sit you down and sign anything, and I said, 'mate, you told me there was nothing to be signed, we shook hands and that was it', and he said, 'nah mate, you've dropped the ball, you're always on your phone', which is a [REDACTED] - I didn't drop the ball - I worked my arse off every day.

"I wasn't asking for more money, I was just asking for what I was entitled to."

Aiden contacted the Fair Work Ombudsman the day he was sacked.

"I gave them everything that had happened - they took it all down - and that was all I heard from them."

Aiden also contacted the company that was responsible for organising his apprenticeship.

"Honestly, when I got fired, I called up my apprenticeship place - and they said, 'ah mate, there's nothing we can do, call up Fair Work'.

"I remember the first day that I signed up and signed my paperwork, the guy said to me, 'hey mate, I'm going to be the person who, if you ever have a problem with your apprenticeship, call me, you can call me whenever you want,' blah blah blah - the first time I [REDACTED] call him in my apprenticeship - and he's like, 'ah mate, we can't do anything for you - call Fair Work', it was just [REDACTED]"

Industrial Relations Claims commenced proceedings in the Fair Work Commission on behalf of Aiden for a general protections claim involving dismissal because he was fired for exercising a workplace right.

A month later [REDACTED] agreed to settle the matter with a \$15,000 payment to Aiden - but out of that money, he had to pay our legal fees.

"I feel like the employer should have to pay because I was the one out of a job, and I had to go somewhere else to retrieve money that was stolen from me. And it cost me over \$2,000."

Aiden fears that [REDACTED] will continue to underpay apprentices, and believes they should have been criminally charged for stealing his wages.

"A commercial plumbing company like the one I was working for, they're turning over \$20,000-plus for a single job - and to take money from a young apprentice, like why shouldn't they be held accountable for stealing from the small man?"

Aiden wants businesses who commit wage theft to be put on a publicly available register.

"I feel like there should be some sort of flag that comes up when an apprentice joins a company - and that flag says that this company has been done for underpaying an apprentice - and this is what

happened for this apprentice to get his money back - like there should be a register or a flag that pops up - so it doesn't happen to another apprentice."

Aiden's case raises a number of issues:

- The vulnerability of young apprentices to exploitation
- The ease with which the employer could commit the wage theft
- The worker was fired when he questioned the underpayments
- The worker received no assistance from the FWO
- The worker had to pay for legal assistance to recover his stolen wages
- The employer continues to operate without penalty or a black mark against their name

CASE STUDY #4

ALANNA WEST - APPRENTICE HAIRDRESSER RIPPED OFF \$22,415

Alanna was 15 years-old when she started a hairdressing apprenticeship at [REDACTED] in Maroochydore in November 2014. It was her first job. Alanna was incorrectly paid under a state award, instead of a modern award, which resulted in her being paid below the correct minimum rate she was entitled to. She was also not paid overtime.

"I worked hard for my money, and already as an apprentice, you're only on \$8 or \$7 an hour, and when he was ripping me down to \$5 an hour, or \$4 an hour, it was hard work when I was going over 40 hours per week at such a young age."

In addition, she was not allowed meal breaks as set out in the modern award.

"I knew it was wrong. I went and got their lunches instead of eating mine."

Alanna was also not paid any superannuation. In June 2016, [REDACTED] from [REDACTED] sent an email to Alanna's mother, Lisa Thomas, incorrectly stating that the business did not have to pay Alanna superannuation.

"Because I was only 15 at the time, they thought that I had to be 18, they believed, or was told that I had to be 18 to receive any type of superannuation."

When Alanna complained about her pay and conditions, including not being paid superannuation, she said her boss [REDACTED] verbally abused her, and offered her an ultimatum - either resign or be sacked.

"When I did, I got sworn at, and that's when I had enough, I took a lot of [REDACTED] from them before I decided to snap, and when I snapped, that's when he made me resign."

Alanna's mother Lisa contacted the Fair Work Ombudsman, who confirmed that her daughter should have been paid under the modern award, but the only advice she was given about the underpayments was to try and negotiate with [REDACTED] directly - which he refused to do.

“They gave us advice and said that we had a right to bring it up with the boss and that we should try and come to an agreement - try and meet up in person about it, and have a conversation, but my boss wasn’t prepared to do that.”

Industrial Relations Claims (IRC) calculated that Alanna was underpaid a total of \$22,415 and \$2,129 in superannuation. Fair Work Employment Lawyers commenced litigation in the Federal Circuit Court. Before the mediation process began, ██████ offered to pay Alanna \$15,000 compensation, which she accepted.

“I have decided to go into hospitality because the hairdressing industry - I can’t deal with things like that. I never want to go back - it turned me off hairdressing completely. I have a passion, but I just couldn’t do it anymore.”

Alanna had to pay our legal fees out of the settlement money.

“I only got back \$15,000, but after I paid the fees for Industrial Relations Claims, I think I was left with around \$11,000, which I understand, but I don’t think is very fair because that has come out of the money that I was owed in the first place”.

Alanna’s case raises a number of issues:

- The vulnerability of young workers to exploitation
- The power imbalance between the employer and the very young worker
- The ease with which the employer was able to get away without paying superannuation
- The worker lost her job after raising the wage theft
- The only advice from the FWO to recover the lost wages was for the worker to negotiate with the employer - which he refused to do
- The worker did not recover all of the money that was owed to her
- The worker was left out of pocket pursuing wages that were rightly owed to her
- The employer continues to operate without penalty or a black mark against their name

CASE STUDY #5

TOMY WIRAWAN - GRADUATE LAWYER RIPPED OFF \$18,000

Tomy was a graduate lawyer, and was offered unpaid work experience with ██████ based at the ██████ Shopping Centre in July 2017. The initial arrangement was for Tomy to undergo a one-month probationary period, with the possibility of a paid position after that.

“When I had the interview with ██████, he said, ‘let’s have a look at you for one month, and after one month, if you perform well, we’ll likely hire you’. But then he sent me an email, and it said three months probation.”

During the unpaid probationary period (unexpectedly extended from one month to three months) Tomy did banking and conveyancing work for the firm, including title searches and background checks.

“I also did social media for them. So I went on their website and improved their website. I made

their Facebook page, I made them a LinkedIn company profile, so I actually did some I.T. stuff outside of law, because I had expertise in that area, and they were very keen to use my skill set in that area as well."

At the end of the three months, Tomy inquired about his future, and the possibility of a paid position with the firm.

"They said, 'oh yes, we've got a contract waiting for you, it's just getting prepared', but they just kept extending it basically - three months became four months, and then five months. They said, 'yep, we're going to hire you at the start of January', and I was like, okay, I've waited five months, one additional month should be okay, but suddenly I got cut off. They just said, 'oh no, we don't know, you're not doing well, you haven't done the right thing', and then they dumped me."

After six months working at the firm without pay - [REDACTED], one of the directors - gave Tomy a cheque for \$500, and told him it was a 'Christmas gift'.

"I was just passionate about becoming a lawyer, but when they got rid of me, I was feeling disgusted, betrayed, depressed, you know, just sad that this kind of thing happened. I felt used, and I felt like this isn't fair and it shouldn't happen to other people - so I thought I would take action."

Industrial Relations Claims (IRC) took on Tomy's case, arguing that an employment relationship had existed, because of the length of time he had worked at the firm, and because he was doing tasks that a paid employee would normally do. Further, unpaid internships and vocations must be organised through an accredited education provider, and be a requirement of a course.

In this case, the employer tried to argue that Tomy was completing such an unpaid placement, however they changed their position when IRC pointed out that Tomy had already graduated.

IRC lodged a claim in the Fair Work Commission for a contravention of a general protections provision involving dismissal. At conciliation, [REDACTED] agreed to pay Tomy \$18,000 general damages.

"If they had just told me after my three months probationary period - 'it's not working out, we're not going to give you a job' - because three months is a pretty long time - it would have been simpler - rather than baiting me for another three months, telling me I've done a great job, and then suddenly not hiring me."

"I felt betrayed. This is not how people should be treated."

Tomy's case raises a number of issues:

- The vulnerability of a young graduate desperate for his first paid job
- The ease with which the employer was able to string the worker along with the promise of paid employment
- The unlawfulness of lengthy unpaid probation periods or work experience
- The worker had to fund his own legal action to recover the wages
- The employer continues to operate without any penalty, or black mark against their record

10. The reasons why wage theft is occurring

10.1 Wage theft is not a crime

Queensland workers were once afforded some protection under section s.666 of the *Industrial Relations Act 1999 (Qld)*⁴⁷, which made the non-payment of wages an Offence.

But that changed in 2006, with the federal take over of all Constitutional Corporation Employees, (and the subsequent remitting of Employees Sole Traders and Partnerships to become National System Employees). In addition, the *Fair Work Act (2009)* only includes civil remedy provisions, not criminal remedies for non-payment of wages.

These changes had the effect of removing a significant deterrent for employers to commit wage theft.

“At the moment, they’ve got no reason to do the right thing, so they just rip people off. They get away with it because they can. Unless someone goes to the extent that we did - there’s nothing stopping them doing it to the next person.”

- Thomas Ruscoe Jones⁴⁸
Service manager ripped off \$261,715

10.2 The chances of getting caught are remote

The chances of an employer ever being detected exploiting their workers by the Fair Work Ombudsman are remote.

Consider the numbers:

According to the Australian Bureau of Statistics, at the end of 2016-17, there were 868,248 employing businesses in Australia with 12,471,000 workers.⁴⁹

We understand that the FWO has approximately 250 inspectors, or one inspector per 3,473 employing businesses, or one inspector for every 50,000 employed persons.

With those odds, why wouldn't you take the risk?

After a recent audit of restaurants and cafés found that three quarters of workers were being underpaid, the Ombudsman conceded that its task of policing wage theft was all but hopeless.

⁴⁷ Queensland Government (1999) *Industrial Relations Act 1999*
<https://www.legislation.qld.gov.au/view/pdf/2002-04-26/act-1999-033>

⁴⁸ Appendix G (2018) Interview Thomas Ruscoe-Jones

⁴⁹ ABS (2018) *8165.0 Counts of Australian Businesses, including Entries and Exits Jun 2013 to Jun 2017*
<http://www.abs.gov.au/ausstats/abs@.nsf/mf/8165.0>

“There are over 50,000 cafés, restaurants and takeaway outlets in Australia and the FWO cannot fix this one café at a time.”

- Natalie James⁵⁰
Fair Work Ombudsman

Embarrassingly, this was the Ombudsman asking the hospitality industry for help to police itself. That concept is laughable. If the industry was the slightest bit interested in solving wage theft, the problem would not be so rampant in the sector.

10.3 An expensive workplace watchdog that deliberately deflects calls for help

The Fair Work Ombudsman’s 2016-17 annual report confirms it spent \$121 million of taxpayer funds to resolve a modest 25,332 “requests for assistance involving a workplace dispute”.⁵¹

That is only 487 cases a week for \$2 million a week - how is that bang for buck for the taxpayer?

That same year, the FWO says it helped “more than 17,000 workers” recover stolen wages.

However, during the same period, the FWO received more than 352,000 inquiries through calls to its info line and online service.⁵²

It is implausible to suggest that out of 352,000 inquiries, that just 17,000 involved workers requesting assistance for wage theft. That is barely 2% of inbound contacts.

Activities and recoveries

In 2016–17, we recovered more than \$30.6 million in unpaid wages for more than 17 000 workers through requests for assistance involving a workplace dispute and FWO-initiated activities. Of the 26 917 requests for assistance involving a workplace dispute:

We believe 17,000 grossly underestimates the number of workers who contact the FWO with complaints about wage theft.

What the figures actually suggest is that the FWO deliberately deflects legitimate complaints of wage theft at the first phone call so they never become a “request for assistance involving a workplace dispute”.

⁵⁰ FWO (2018) *FWO’s Food Precincts campaign returns \$471,904 in wages owed to hospitality workers*

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20180711-food-precincts-mr>

⁵¹ FWO (2017) Annual Report 2016-17

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171024-annual-report-mr>

⁵² FWO (2017) Annual Report 2016-17 Pages 15 & 16

This assertion is supported by the evidence of the workers in this submission who attempted to seek assistance from the FWO, only to be fobbed off - which is exactly what happened in this next case study.

CASE STUDY #6

KYM RAKE - WASTE TRUCK DRIVER RIPPED OFF \$135,812

Kym was employed by [REDACTED] based [REDACTED] north of Brisbane as a waste truck driver from 2009 until 2016. During the term of his employment he was not paid the correct minimum wage that he was entitled to under the *Waste Management Services Award*.

"We used to keep asking them about the wages and we were the lowest paid in the industry, and they'd just say, 'well you're getting paid too much now'."

Instead of being paid overtime, Kym was told to "bank" the extra hours that he worked each week, and take that time off on another day. This had the effect of cheating him out of higher overtime rates of between \$37 and \$50 an hour that he should have been paid for the work.

"A lot of time we'd do 17/18 hours straight, and the next day, they'd say to just take four hours out of the next day, so I'd get the 10 hour day."

Kym was also not given meal breaks that he was entitled to under the award.

"Nine out of 10 times we never stopped for lunch because we were just too busy, and then they'd just say, 'oh well, that's your fault you didn't stop'."

Kym arranged with his boss [REDACTED] to salary sacrifice \$300 each pay day to be deposited into his super fund as additional contributions. Instead of putting that money into Kym's fund, [REDACTED] pocketed the cash by depositing it into his own family trust.

He brazenly stole Kym's money.

"Yeah, it was going into the family trust - they were putting nothing into my super - and when I challenged him, he eventually paid me \$8,000 but there was still, I think it was about \$7,000 or \$8,000 owing - so I just said to him, 'I'll just take that in time off'."

"That's just thievery - that's my money, not his, and he's taking it out of my pay and putting it in the family trust and I never saw it again. Unbelievable."

"All the interest that I lost on that, I would like to get that back."

Kym had kept extremely accurate work records in the form a diary, and he had also kept all of his pay slips, so he called the Fair Work Ombudsman.

"I rang em up, and explained all my story, and I had all my diaries - every hour that I had worked, every pay slip they ever gave me, I had everything in my possession, and they sort of said to me, 'oh what rate are you getting paid?' and I told em, and they said, 'oh you're getting done', - I said, 'I know that!'"

Kym was forced to calculate the underpayments on his own, but when he contacted the FWO again, it didn't want to help him.

"They weren't interested.

"They said, 'oh somebody will ring you', and after three weeks, nobody had rung me, so when I rang back to enquire, this sheila says, 'well if you've made a complaint, you are in the queue, and we'll be in touch', and hung up."

The FWO never rang back.

"After that I just washed my hands of them, I thought well if that's the way it's going to be, then I rang Miles."

With Kym's meticulous work records, Industrial Relations Claims was able to calculate that he had been underpaid \$135,812.

Fair Work Employment Lawyers lodged a Statement of Claim in the Federal Circuit Court, and at conciliation, ██████████ agreed to pay Kym \$30,000 general damages, plus \$20,000 superannuation, plus \$10,000 in legal fees, totalling \$60,000.

"They decide what they're going to pay you - it's got nothing to do with any award or anything else, it's just, 'that's what we pay' - and you just have to put up with it."

Kym's case raises a number of issues:

- The ease with which the employer was able to fob off the worker when he made enquiries about being underpaid
- The brazen way the employer was able to steal superannuation contributions
- The ease with which the employer could make the worker "bank" his overtime hours instead of paying proper overtime rates
- The worker was left to calculate his own underpayments
- The refusal of the FWO to assist despite the worker having detailed documented evidence proving the wage theft
- The worker did not recover all that was owed to him
- The worker was left out of pocket pursuing wages that were rightly owed to him
- The employer continues to operate without penalty or black mark against his record

10.4 The Fair Work Ombudsman has a policy of non-enforcement

One of the reasons wage theft has been allowed to run rampant is because of the Fair Work Ombudsman's bizarre policy of only taking enforcement action in "no more than 10% of cases".⁵³

The fact that it sets this target without even assessing the level of wage theft is arbitrarily negligent.

⁵³ FWO (2017) Annual Report 2016-17 Page 10

Performance criteria	Indicator	Target	Achieved
The FWO manages requests for assistance in a timely manner.	Average number of days requests for assistance involving a workplace dispute are finalised.	30 days	15 days
The FWO provides information and advice that is accessible, timely and reliable.	Availability of website services (time available as a percentage of total time).	99%	99%
	Availability of contact centre services (percentage of availability during advertised hours).	99%	99%
The FWO takes a risk-based and proportionate approach to its compliance and enforcement activities.	Requests for assistance involving a workplace dispute finalised through education and dispute resolution services.	at least 90%	94%
	Requests for assistance involving a workplace dispute finalised through compliance and enforcement tools.	no more than 10%	6%

Astonishingly, the FWO sees it as a better-than-target “achieved” to use enforcement in only 6% of wage theft complaints in 2016-17.

While education and resolution might be appropriate for wage theft that has occurred as the result of a genuine mistake, it is misconceived at its very purpose to let 94% of bosses who rip off their workers go free without penalty or record.

Whoever set the “no more than 10%” enforcement target has telegraphed a promise to rogue employers that wage theft is worth the risk, because they will almost certainly never face enforcement action by the regulator.

10.5 The Fair Work Ombudsman lets most guilty employers off the hook

The Fair Work Ombudsman will only commence an investigation if it involves “very serious issues” or “is in the public interest” to do so.⁵⁴

So, of the “more than 17,000” workers who had their wage theft complaint accepted by the FWO, 94% were closed off through “education and dispute resolution activities” - recovering just \$16.7 million, which is an average of only \$980 per complaint.

This left a measly number of claims - just 1,585 - which became enforcement proceedings and raised \$4.6 million, or an average of \$2,900 per enforcement action.

In the same year, the FWO only commenced 33 strategic litigations involving wage theft and/or working conditions and record keeping, and completed just 50 Civil Remedy claims.

Think about it:

Out of the “more than 17,000” victims of wage theft, the workplace watchdog let every guilty employer off the hook, in all but 1,585 cases.

They are great odds for an employer who weighs up the risk versus reward of non-compliance.

⁵⁴ FWO Website *Enforcing the Legislation*
<https://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation>

10.6 Unsustainable business models

One of the major causes of wage theft in recent years has been the prevalence of businesses with flawed operating models - usually found in industries where there is fierce competition and small margins.

These flawed business models have inevitably resulted in systematic wage theft - leaving operators with little choice - they either cut wages or go bust.

The most well known example of these was the 7-Eleven underpayments scandal which was first exposed in 2014, and has since seen six Brisbane outlets investigated and penalised for underpaying staff.⁵⁵

More recently, an audit of Caltex retail fuel outlets in Brisbane, Sydney, Melbourne and Adelaide found that 76 percent were non-compliant with workplace laws, leading the Ombudsman to describe them as an “unsustainable business model.”⁵⁶

Then there is the pizza delivery industry, which has been plagued with underpayments since a discounting war broke out between the major brands four years ago.

“So consider all these factors: a competitive market with predominantly low skilled workers, where we know that migrants often work, and appallingly low rates of compliance with work laws in fast food generally. What impact might these ‘pizza wars’ be having on the pay packets of these vulnerable workers?”

- Natalie James⁵⁷
Fair Work Ombudsman

The so-called “pizza wars” sent many franchisees to the wall - and landed others in court facing huge penalties for ripping off their workers.

Gold Coast ‘Pizza Hut’ franchisee Dong Zhao was penalised \$216,700 for underpaying a delivery driver through a sham contract paying him a flat rate of \$16 an hour.

Zhao told the court that he relied on a profit and loss projection that head office had given him, which showed a projected profit of \$100,000 a year for the first six years.

But instead of making a profit, he endured losses every year, which he blamed on the heavy discounting ordered by head office which forced him to sell pizzas at below cost.

⁵⁵ FWO (2018) Media Release *\$192,780 in penalties for Brisbane 7-Eleven outlet*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/june-2018/20180605-s-and-a-enterprises-penalty>

⁵⁶ FWO (2018) Media Release *FWO Report finds three quarters of Caltex sites breaching workplace laws*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/march-2018/20180305-caltex-media-state-ment#>

⁵⁷ FWO (19 May 2017) Speech by Fair Work Ombudsman Natalie James *Certainty from Disruption? The workplace regulator’s role in new economies*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/speeches>

10.7 Tougher penalties might not be enough

In October, the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*⁵⁸ went some way to addressing the problem by increasing penalties and making franchisors liable for wage theft committed by their franchisees in some circumstances.

However, the increased fines only apply when the underpayments are “deliberate and systemic”. As long as a franchisor can show that they took “all reasonable steps” to prevent wage theft, they are off the hook.

In addition, it can be argued that large monetary penalties already exist for wage theft, and they have failed to curtail the problem.

7-Eleven recently signed a “landmark” agreement with Fair Work, which is being touted as “a new standard for the franchise industry”.⁵⁹

The terms of the deed include a number of ‘Big Brother’ measures, like a central payroll system and new CCTV cameras so head office can monitor employees wages and hours of work.

It remains to be seen if these tougher measures will reduce wage theft in the franchise sector.

10.8 Community, industry and government attitudes

Unfortunately, many in the community think that wage theft is not a serious matter, believing it is simply an “underpayment of wages” that probably happens as the result of genuine errors.

Look no further than federal Workplace Minister Craig Lundy, who perpetuates this myth by claiming that most cases of wage theft are not deliberate, and that more education is the solution.

“Information is the key here, not throwing people in jail.”

- Craig Lundy⁶⁰
Federal Workplace Minister

We wonder if Mr Lundy would also support “education” for a worker in one of his family-owned pubs who gets caught stealing \$8,000 from the office safe - or would he expect the police to be called and criminal charges laid?

The Minister’s suggestion that more education is the answer is naive at best, and not based in fact.

The Fair Work Ombudsman’s annual report proudly proclaims that its education activities are in abundance.

⁵⁸ FWO (2017) Media Release *Changes to Workplace Laws for Franchisors and Holding Companies*
<https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/changes-to-workplace-laws-for-franchisors-and-holding-companies>

⁵⁹ SMH (2018) *7-Eleven clamped by Fair Work Ombudsman in new landmark deed*
<https://www.smh.com.au/business/companies/7eleven-clamped-by-fair-work-ombudsman-in-new-landmark-deed-20161207-gt5irm.html>

⁶⁰ SMH (2018) *Pressure mounts on federal Labor to pledge to criminalise wage theft*
<https://www.smh.com.au/business/workplace/pressure-mounts-on-federal-labor-to-pledge-to-criminalise-wage-theft-20180525-p4zhjj.html>

11. What happens when a worker tries to recover stolen wages

Attempting to recover stolen wages can be time consuming, confusing, stressful, demoralising, and costly for workers.

11.1 It's up to workers to crunch the numbers

Firstly, an employee must request time and pay records from their employer, and then painstakingly calculate the underpayment, going back up to six years.

Unless a worker has a good understanding of their award, including how penalty rates are applied, they can often get these calculations wrong.

And that's if the records are provided in the first place.

It is our experience that employers often delay or refuse to hand over employment records, as a deliberate strategy to frustrate the process - and if they are provided, they are often incomplete.

The Vulnerable Workers Bill introduced a reverse burden of proof in the absence of records, and while this helps, it does not go far enough.

Employers can dispute hours worked by an employee with testimony from witnesses.

This happened in the following case study, which required our forensic analysts to reconstruct six years of wage records for the worker. (see Attachment)

CASE STUDY #7

THOMAS RUSCOE-JONES - SERVICE MANAGER RIPPED OFF \$261,715

Thomas was employed by [REDACTED] from 2007 until 2018 working at a number of dealerships in Brisbane and Ipswich. He was first employed as an Accessories Employee, then promoted to Accessories Manager, and in 2015 he was made a Service Manager.

Over the course of his entire employment, Thomas was paid for a standard 38 hour week, but worked much longer hours. He was not paid the correct hourly award rate, and he was not paid overtime - except for a short period when he was given \$100 cash-in-hand when he worked late on Thursday nights.

"They just claimed that because I was on salary, they didn't have to pay it - no overtime at all. We were getting paid for 38 hours, but we were working 47/48 hours a week."

Thomas was also not allowed to take meal or crib breaks, as outlined under the award.

"They just said you don't get breaks because there is no one else to cover the position, so you can't leave the counter, because customers might come in. And they said, if you want to eat, just eat at your counter while you work."

Thomas went to the FWO website and printed out a page detailing the proper wages and conditions of his employment as set out under the relevant award, and took it to management.

"They basically just laughed at me, and said there was nothing I could do about it."

Industrial Relations Claims (IRC) made numerous requests to ██████████ for Thomas' employment records, even once attending his workplace, but the company failed to provide the records as required by law.

Thomas' wife Eva Rankmore said ██████████ was deliberately difficult.

"When we asked for Tom's employment records, they claimed they had this storm go through this store, and this storm go through that store in this year and that year, and that's why we don't have the documents."

"Then they were threatening to have a performance review with Tom - which they've never done."

After weeks of work, IRC was able to calculate that Thomas was underpaid \$261,715.

"I was amazed when I found that out. I never realised it was that much that I was getting jipped on."

Thomas' wife Eva said they had previously tried to do their own calculations to work out how much he was owed, but forgot to include overtime and penalty rates.

"We were gobsmacked, because with penalty rates - where we weren't thinking of penalty rates - we were just thinking, he's working this many extra hours a week, if I was paid my standard rate, this is how much I think I would be owed."

The company fought the claim, creating false affidavits claiming Thomas didn't work through his breaks.

In addition, ██████████ insurance company was paying its legal bills - which made it easier for the company to continue fighting the claim.

Fair Work Employment Lawyers lodged a Statement of Claim in the Federal Circuit Court, and eventually during court-ordered mediation, ██████████ admitted to the underpayments, and the failure to provide breaks, and the failure to maintain proper employment records. The company agreed to pay Thomas \$50,000.

"I was really happy with the result in the end, but it was really stressful - it took a lot of time and a lot of stress to get there."

During the industrial action, Thomas was threatened, harassed, and intimidated by his bosses, and according to his wife Eva, his reputation in the industry was also trashed.

"They completely destroyed his chances of getting another job in the industry as part of the process. They made it public to other businesses within the industry, we don't know who specifically, but as part of his interview with another company, he was asked about his litigation against his current employer."

In order to resolve the matter, Thomas had to pay fees to IRC, leaving him with less money than the original settlement.

"I'm better off than what I would have been if I hadn't chased it up, but yeah, you shouldn't have to do it in the first place."

Eva wants wage theft laws changed so that other workers don't go through what Thomas did.

"I think it should be a criminal offence and I don't know how you can make it easier, but I think it should be easier - like, you shouldn't have to go through the Federal Circuit Court to get what's owed to you."

Thomas' case raises a number of issues:

- The employer was able to easily fob off the worker when he raised concerns about his pay and conditions
- The employer did not keep proper employment records as required by law
- The worker was subjected to bullying, harassment, threats and intimidation after commencing legal action to recover his stolen wages
- The worker eventually lost his job for taking action to recover the underpayments
- The worker had his reputation in the industry destroyed, making future employment difficult
- The worker did not recover all of the wages that were rightly owed to him
- The worker was left out of pocket by pursuing the claim
- The business continues to operate without penalty or a black mark against its name

11.2 Workers don't know what to do next

Once an employee calculates their underpayments, they often don't know what to do next.

They can write a Letter of Demand, but if their employer refuses to pay up, how can ordinary workers begin to navigate the complex and costly legal process without paying for expert help?

This is why many workers never get any further with their claim.

"We didn't have the knowledge of the agreements and the pay rates. It was certainly the first time I'd picked up my agreement and read it closely, so we certainly were grateful to be guided by Miles and his team, because they knew what they were doing."

- Kasey Cockburn⁶⁴
Former hospital admin staff ripped off \$16,436

⁶³ Appendix I (2018) Interview [REDACTED]

⁶⁴ Appendix N (2018) Interview Kasey Cockburn

11.3 FWO mediation encourages workers to bargain away their stolen wages

Workers shunted into the Fair Work Ombudsman’s “voluntary mediation” service are encouraged to bargain away their stolen wages.

According to the FWO 2016-17 Annual Report, 3,716 wage theft complaints were resolved through the mediation service, but only recovered an average of \$1,500 for each worker - which it describes as “back-payments”.⁶⁵

The FWO employs “accredited mediators” - whose very role is to seek compromise. A worker should never be asked to bargain and compromise on their wages that have been stolen - and the FWO should not have a unit dedicated to facilitating this.

In 2016-17, the FWO “assisted 700 people to pursue their small claims directly before the courts”. Of those, only 171 went to final determination, recovering an average of \$5,700 in each case.

Put another way, the court process raised three to four times more for the worker than the FWO’s own mediation process.

This provides a compelling case that the FWO is facilitating a compromise approach to recovering back pay, which results in the worker having to settle for 20 to 30 cents in the dollar of what they are owed, and the employer walking away without penalty or consequence.

This is fundamentally unjust and unfair.

More concerning is that the small claims process nets nearly double the FWO’s own enforcement results.

Both mediation and small claims are free from pecuniary penalties, so again, there is no meaningful deterrence for employers who don’t want to comply with workplace laws - even when they interact with the FWO after it receives an underpayment complaint.

11.4 The financial cost of launching legal action to recover stolen wages

Wage theft matters that go to court can take months, even years, which can present a significant barrier to justice for workers who don’t have the resources to take on deep pockets.

Consider the costs:

<p>Federal Circuit Court Fees and Costs⁶⁶</p> <p style="margin-left: 40px;">\$665 to file an application</p> <p style="margin-left: 40px;">\$535 for a mediation fee</p> <p style="margin-left: 40px;">\$795 per day for a trial</p>

⁶⁵ FWO (2017) Annual Report 2016-17 Page 14

⁶⁶ (2018) Federal Circuit Court fees and costs
<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/forms-and-fees/fees-and-costs/fees-gfl>

Cost of Professional Representation (for 2 day hearing) ⁶⁷	
\$2,936	application fee
\$3,079	dispute resolution
\$5,811	prepare for two day trial
\$2,199	daily hearing costs
\$299	final hearing costs

If a worker has the funds to launch legal action, they are first directed to mediation, where, just like at the Fair Work Ombudsman’s mediation service, they are encouraged to bargain down their stolen wages, often settling for as low as 30 cents in the dollar.

In addition, if a case is settled at mediation, there is no penalty for the rogue employer who lives to fight another day with their reputation intact.

When you consider the costs outlined above, (\$18,500 for a two day trial), it is our experience that many workers simply cannot afford to take the first steps of litigation, even if they are owed substantial underpayments.

“They said I would need about \$1,400 to get the ball rolling, and I didn’t have that. It’s not fair on me that I have to let \$40,000 go - just because I didn’t have \$1,400. I was broke, I was struggling, I needed that money.”

- Jamie Gardner-Hudson
Former service station attendant ripped off \$40,000

“It’s ridiculous. We had to pay more than \$1,000 in court lodgement fees and mediation fees. We were lucky that Miles charges the fees that he does, because if we had to pay a lawyer by the hour, their tactics would have worked. We would have given up.”

- Eva Rankmore⁶⁸
Wife of Thomas Ruscoe-Jones ripped off \$216,715

[Redacted]

⁶⁷ (2011) Federal Circuit Court Rules - Schedule 1 - costs
http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_reg/fccr2001262/sch1.html

⁶⁸Appendix H (2018) Interview Eva Rankmore

⁶⁹Appendix I (2018) [Redacted]

This next case study involves a worker who had to abandon a claim for \$40,000 in stolen wages, because he couldn't afford to commence legal action.

CASE STUDY #8

JAMIE GARDNER-HUDSON - FORMER SERVICE STATION ATTENDANT RIPPED OFF \$40,000

Jamie was employed as a service station attendant at the independent BP on [REDACTED] from 2007 until 2014. For the first two years, he was paid correct wages, but in 2009 when [REDACTED] bought the business, they refused to keep paying Jamie the award wage - instead paying him a flat rate of \$16 an hour.

"I would say to these guys, 'hey can you check it because it's increasing and I should be getting paid more', and they would smile and laugh and say, 'if we have to pay you more, we'll just fire you, and say that we can't afford to pay you'."

Jamie would work Monday to Friday during the day, and then swap onto night shift finishing work at 10.30pm. He was not paid any overtime or penalty rates.

The [REDACTED] stopped providing pay slips and began paying him in cash.

"Instead of paying me my wages into a bank account, they were paying me in cash, and then saying, 'well you're due to have \$1,000 as pay, we'll take out whatever you owe in taxes', and then gave me the rest in cash."

When he finished employment, Jamie contacted the Fair Work Ombudsman.

"The Ombudsman gave me all the correct pay rates, and when they went up and in what year, which allowed me to come up with a spreadsheet, so I could calculate how much I was paid, how much I should have been paid, and the differences and all that sort of thing."

Jamie worked out that he was owed \$40,000, and asked the Fair Work Ombudsman for help.

"They said they would call up my employers and ask them about it, so they called them up, but my employer told them that they believed that I had been paid correctly - and they didn't think they owed me any money at all."

"They said, 'we'll see if your employers wants to sit down and have mediation and sort things out' - and of course they said, 'no we don't want to do that' - and that was it."

"They just said 'there's nothing further we can do'."

Jamie went to legal aid who told him he would have to pay for industrial matters, so he went to the Queensland Public Interest Law Clearing House (QPILCH) who told him to write a Letter of Demand to his employers, which he did - but it was subsequently ignored.

To commence litigation, QPILCH told Jamie that he would need \$1,400 - money he didn't have.

"What am I supposed to do - it's a large sum of money, but I don't know what I'm supposed to do to get it."

Now in 2018, with time running out, Jamie is only eligible to claim for two years of his stolen wages, but still cannot afford to take legal action to recover the money.

“The way I see it, I don’t mind if a firm goes into bat for me, and they win the case, and they say, ‘look, we’ve got to take \$1,000 or \$2,000 out for fees’, I’d go, ‘sweet, because you’ve done the job’ - but they’re saying to me that I’ve got to come up with that amount of money first to get back whatever is already owed to me - it’s unfair.”

Jamie wants wage theft laws to be toughened up.

“It definitely should be made a criminal offence, because if you’re making money, you shouldn’t be stealing from other people. I think more employers would wake up to themselves, and think twice before they do what they are doing.”

Jamie’s case raises a number of issues:

- The ease with which the employers were able to commit wage theft
- The unlawful cash payments
- The Fair Work Ombudsman told the worker it was powerless to do anything about the underpayments
- The worker was not able to afford legal assistance to recover the substantial amount he was owed
- The worker is left \$40,000 out of pocket
- The employers continue to operate businesses in Brisbane without penalty or a black mark against their name

11.5 ‘Running out the clock’ a common tactic

In our experience, we have found that a common tactic many employers use is to first deny errors or wrongdoing, and then draw out the process in the hope that the employee simply gives up on their claim. This includes withholding time and wage records as noted earlier.

With a time limit of six years for an employee to make a claim for wage theft, it is also a tactic employers use to reduce liability - the longer they delay, the less they have to pay back.

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block containing multiple paragraphs of blacked-out content]



11.6 Pecuniary penalties are never awarded to the worker

To seek pecuniary penalties, an employee must first take the matter to final determination at court, usually the Federal Court or the Federal Circuit Court.

But recovering an underpayment in either of those courts is a herculean effort for anyone who has to fund their own litigation, as it is usually a no-costs jurisdiction that can take up to two years.

Even if a worker does get to the finish line, it is up to the sitting judge or justice of the day, as to the quantum of pecuniary penalties, but importantly, whether those penalties are directed to go to the employee, or to the Crown as consolidated revenue.

It is our experience that in nearly all judgements, pecuniary penalties go to the Crown.

“Even though the penalties may get paid, they just go into the government coffers - so I don’t think that’s fair.”

- Carolyn Bridges⁷⁰
Former medical centre receptionist ripped off \$37,000

“The employer should be made to pay the costs of the worker, seeing they are the ones doing the wrong thing - they are the ones breaking the law - they should be the ones paying for it.”

- Tomy Wirawan⁷¹
Graduate lawyer ripped off \$18,000

A previous decision by the Full Bench of the Federal Court that found that judges should award pecuniary penalties to workers.

“Furthermore it is not apparent to us why the receipt of a penalty should not operate as an incentive to an affected person to bring a prosecution like this under the Fair Work Act. This incentive to bring and maintain such a proceeding makes it more likely that the applicable provisions of the FW Act ‘will be more than mere words on the statute book’.”

- Full Bench of the Federal Court⁷²

Until this injustice is addressed, a worker who is funding their own claim needs to be recovering more than \$50,000 to make the financial risk of litigation worth it.

Remember, the estimated cost to be represented at a two day trial in the Federal Court is \$18,500.⁷³

11.7 Court orders don’t always mean a worker gets paid

Courts often order employers to repay stolen wages, but that doesn’t mean they will pay up.

A former employee of musical instrument retailer Allans Billy Hyde in Sydney was advised by the Fair Work Ombudsman to commence his own legal action to recover \$19,619 in stolen wages, which he did. Despite a successful court ruling - he is still waiting for his money.

⁷⁰ Appendix D (2018) Interview Carolyn Bridges

⁷¹ Appendix J (2018) Interview Tomy Wirawan

⁷² Federal Court of Australia (2016) *Sayed v Construction, Forestry, Mining and Energy Union* [2016] FCAFC 4

⁷³ Federal Circuit Court (2011) Federal Court Rules - Schedule Costs
http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_reg/fccr2001262/sch1.html

“Basically the judge ruled in my favour in about three minutes... and that was early June but I’m still waiting to be back paid.

- Former music store employee ripped off \$19,619⁷⁴

If an employer refuses a court order to back pay stolen wages, the worker must then keep fighting, by seeking enforcement orders. And so the frustrating and costly process goes on.

A common tactic used by employers to avoid complying with a court order to repay stolen wages is to declare bankruptcy - which is what happened in this next case study.

CASE STUDY #10

BRENTON LARCOMBE - RIPPED OFF \$14,653

Brenton worked as a manager at sex on premises venue ██████████ in Fortitude Valley from 2002 until 2012. At the end of his employment, he claimed that he was owed \$14,653 in unpaid leave and superannuation.

The company that owned the business went into liquidation in 2013.

Brenton took his case to the Federal Circuit Court where he represented himself, relying on the accessorial liability provisions of the *Fair Work Act* to pursue the ‘operative and controlling mind’ of ██████████ - ██████████.

In his judgement, Judge Michael Jarrett said Brenton’s absence of representation “hurt his case” because he was not able to show the court satisfactory evidence of his unpaid superannuation.

Judge Jarrett ordered ██████████ to pay Brenton \$12,444 in annual leave entitlements, and \$2,160 pecuniary penalties.

A week later, ██████████ went bankrupt, even though he continues to live in a four-storey mansion in Paddington.

Three years on, Brenton still hasn’t been paid.

In addition, lawyers for the liquidators of ██████████ sued the Australian Tax Office for priority payment of funds, to “raise funds for creditors” - but after taking out their fees, there was nothing left for Brenton.

The liquidators action against the ATO was merely a fee raising exercise for themselves. The creditors did not get one cent, including Brenton, even though the amount recovered would have paid all of his entitlements.

⁷⁴ ABC (2018) Owed \$20K: *Fair Work Ombudsman failing underpaid workers, victims say*
<http://www.abc.net.au/triplej/programs/hack/allans-billy-hyde-fair-work-staff-underpaid/9915004>

Brenton's case raises a number of issues:

- The worker had to take legal action to recover his entitlements
- The worker could not afford professional representation which hurt his case
- Despite a favourable order, the worker still hasn't been paid, and has no other recourse to recover his stolen wages

11.8 The Fair Work Ombudsman assists employers in court

And if recovering wages wasn't already hard enough for workers, how's this:

According to the Fair Work Ombudsman's annual report⁷⁵ "FWO lawyers assisted in 137 small claims matters as "a 'friend of the court'".

"In this capacity we don't act for either party, but can assist the parties and the court on points of law or practice."

Industrial Relations Claims does not believe the FWO should be assisting employers in any capacity who are fighting against victims of wage theft in the court process.

12. Recovering unpaid superannuation

Unpaid superannuation is an enormous problem in Australia, with employers failing to pay an aggregate amount of \$5.6 billion in Superannuation Guarantee contributions in 2013-14, which represents 2.7 million affected employees, with an average amount of \$2,000 lost per person in a single year.⁷⁶

Just like every other form of wage theft, unpaid super not only disadvantages the affected worker, it also disadvantages businesses who are compliant.

In order to recover unpaid super, an employee can approach their boss, but many don't do this because they fear losing their job. Instead they usually wait until they finish their employment before taking action.

The other option for workers is to contact the Australian Taxation Office, which has the responsibility for chasing unpaid super. The ATO's Annual Report 2016-17⁷⁷ confirms it received 20,000 complaints about unpaid super.

It is our experience that workers who request assistance from the ATO often encounter a difficult time-consuming and frustrating process.

⁷⁵ Fair Work Ombudsman Annual Report 2016-17 Pages 16

⁷⁶ Commonwealth of Australia (2017) *Superbad - Wage Theft and non-compliance of the Superannuation Guarantee*

⁷⁷ ATO (2017) Annual Report 2016-17

<https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/annualreport.pdf>

“The ATO is an absolute joke!! I worked for a sole trader for 5 years and was never paid any super, which I was entitled to ... I approached the ATO, who established that he did owe me approximately \$12,000 in super contributions, plus interest over five plus years. They spent three years ‘investigating’ the matter, only to tell me at the end that they could not recover any money ... The ATO doesn’t want to know and absolutely refuse to assist me any further to recover the money.”

- Reader of ‘SuperGuide’⁷⁸

The 2017 *Report into Wage Theft and Non-Compliance of the Superannuation Guarantee*⁷⁹ by the Economics References Committee found that the current approach of the ATO is “inadequate” and “reactive”, and that the organisation is under-resourced.

In his 2017 *Review into the ATO’s Employer Obligations Compliance Activities*⁸⁰, the Inspector General of Taxation, Ali Nooroozsi, said the ATO was not doing enough to detect unpaid super, with the majority of cases coming from employee complaints.

He recommended the ATO take a more proactive approach by conducting random audits of businesses.

“These audits might be the only way that the most non-compliant employers might be detected.”

- Ali Nooroozsi
Inspector-General of Taxation

The recommendation was rejected by the ATO because of the cost it might impose on compliant businesses.

Earlier this year, the federal Government announced an increase in penalties for non payment of super - including 12 months imprisonment for employers who ignore orders to pay back super.

It also announced a six month amnesty for employers to pay all outstanding amounts without penalty.

It is too early to tell if these legislative changes will improve the situation, but they are steps in the right direction.

It is worth noting that even when employers pay back super, the ATO often allows them to do it through a payment plan - but these arrangements are agreed to without consultation or permission from the affected employee.

⁷⁸ SuperGuide (2016) *Unpaid super: Should the ATO chase more slack employers?*

<https://www.superguide.com.au/accessing-superannuation/unpaid-super-ato-employers>

⁷⁹ Commonwealth Government (2017) *Report into Wage theft and Non-Compliance of the Superannuation Guarantee*

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/SuperannuationGuarantee/Report

⁸⁰ Commonwealth Government (2017) *Review into the ATO’s Employer Obligations Compliance Activities*

<http://igt.gov.au/publications/reports-of-reviews/atos-approach-to-employer-obligations-compliance-activities/>

"I first contacted the ATO in 2014 when I realised my boss wasn't paying super, and never heard back from them. Then I called them again earlier this year, and they told me my boss owed super to about 25 people and she was paying us all off with a payment plan - at \$30 a week.

"I was never asked about that, and at \$30 a week, paying off 25 people, it's going to be years before I get all my money back."

- Daniel Hogg
Pharmacy assistant

To avoid compliance, some employers put their businesses into liquidation, leaving the ATO with no one to chase for the unpaid contributions, and the worker out of pocket - for good.

Some industry funds actively chase unpaid super for their members by using a credit control and debt recovery provider, Industry Funds Credit Control (IFCC), which works to recover contributions on behalf of the funds.

The involvement of funds in actively detecting and recovering stolen super can only help to reduce its occurrence.

Finally, employees covered by a modern award also have the option of commencing private litigation in the Federal Circuit Court for a contravention of a modern award, but this involves time and cost and the risk of legal action for the worker.

13. The role of Queensland Courts

Queensland workers were better served when there was a dedicated Industrial Magistrate that could hear and determine industrial matters, including cases of wage theft.

But unfortunately, the legislation governing the jurisdiction of the Industrial Magistrate's Court is confusing, and unclear.

On one hand, the *Industrial Relations Act 2016 (Qld)* appears to only allow for the court to deal with matters like long service leave, emergency service leave and jury leave, and excludes hearing private sector wage complaints about contraventions of modern awards and other instruments governed by the *Fair Work Act*.⁸¹

Confusingly, both "Federal Award" and "Federal Industrial Instrument" are defined in Schedule 5 - Dictionary of the *Industrial Relations Act 2016 (Qld)*, but do not appear in the *IRA* or Tribunal Rules in a way that gives clear guidance as to how conferred matters to the Industrial Magistrate by *FWA* matters will be heard and determined.

But then there's this:

⁸¹ Queensland Government (2016) Industrial Relations Act
<https://www.legislation.qld.gov.au/view/whole/pdf/inforce/current/act-2016-063>

The *FWA* expressly authorises the state Industrial Magistrates Court as an “eligible state court”, within the meaning of s.539 - *Applications for orders in relation to contraventions of civil remedy provisions*⁸² and s.545(3) - *Orders that can be made by particular courts*, - and when read in conjunction with s12 of the *FWA*, “eligible state court (b) Magistrates Court”⁸³ - being a “court constituted by an industrial magistrate”.

When you consider the above, it is easy to see that there is no clear process, approved form, tribunal rule or even a practice note offering direction on how a victim of wage theft can file and run a matter before the Industrial Magistrates Court when Civil Remedy Provisions are in play.

We have previously attempted to file wage theft claims involving civil penalties and have been turned away from different Registries because we referred to the *FWA*, forcing victims to the long, expensive, difficult and overworked Federal Circuit Court system.

A local industrial umpire who can determine wage theft cases would make it quicker, easier and cheaper for workers who are attempting to recover wages.

Importantly, an appeal of the Industrial Magistrate can then be dealt then dealt with by the Industrial Court of Queensland - where the most significant industrial relations expertise presides.

Finally, we note that the Queensland Civil and Administrative Tribunal (QCAT) is not eligible to settle claims for enforcement of contracts of employment under the *Fair Work Act*.⁸⁴

13.1 Part 5A Employment Claims in Magistrates Court Act 1921 (Qld)

The stated objective of Part 5A in the *Magistrates Court Act 1921 (Qld)* is “to reduce the cost of proceedings brought in a Magistrates Court by low income employees against employers for breach of contracts of employment”.

While this sounds good in theory, in practice it offers potentially no help to victims of wage theft, and the reason is simple:

Most low paid workers are covered under a modern award, but modern awards are considered an industrial instrument - and it would seem that disputes arising from industrial instruments cannot be heard in the Magistrates Court.

Last year, Industrial Relations Claims represented a school canteen worker in the Industrial Magistrates Court who had been underpaid \$18,000.

But when the case was brought before the court, it was defended by Jim Murdoch QC, who settled a defence to the Part 5A claim arguing the jurisdiction was limited to contracts and not industrial instruments.

The Employer aggressively argued that as a modern award was the basis for the wage theft claim, it was not able to be heard.

⁸² *FWA* (2009) Sect 539 Applications for orders in relation to contraventions of civil remedy provisions
http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s539.html

⁸³ *FWA* (2009) Sect 12 Dictionary
http://www5.austlii.edu.au/au/legis/cth/num_act/fwa2009114/s12.html

⁸⁴ QCAT (2013) *Ervin V Smipat Pty Ltd t/as LJ Hooker Burleigh Heads [2013] QCATA 153*
<https://archive.sclqld.org.au/qjudgment/2013/QCATA13-153.pdf>

2. As to paragraph 1 of the Statement of Claim the Defendants:
- (a) Admit that Part 5A of the *Magistrates Court Act 1921* is sought to be invoked by the Plaintiff;
 - (b) Deny that the jurisdiction under Part 5A of the *Magistrates Court Act 1921* has been enlivened because there is no claim for breach of a contract of employment advanced in the Statement of Claim.

Mr Murdoch's defence worked, and frightened our client into withdrawing her Part 5A claim.

To make matters even harder for the canteen worker, the defense then demanded costs before agreeing to have the matter discontinued, and re-filed in the Federal Circuit Court.

If the defence was accurate, then Part 5A is next to useless for any litigant who has had their wages stolen and is covered under a modern award or enterprise agreement.

This needs to be addressed.

13.2 No equivalent s.475 of the *Industrial Relations Act (Qld)*

Section 475 of the *Industrial Relations Act 2016 (Qld) Power to recover wages and superannuation contribution etc*⁸⁵, is a good law.

It is basically a small claims process, but with excellent efficiency and has the benefit of a member assisted conciliation, usually within a week or two of filing and is without any filing fees.

But s.475 cannot be used by National System Employees except for (mainly) long service leave claims, because there is no equivalent law in the *Fair Work Act (2009)*.

We believe s.475 should be emulated in the *FWA* to allow victims of wage theft to access this efficient process.

13.3 Fair Work Commission and wage theft disputes

Despite the Fair Work Commission being the ratifier of modern awards and enterprise agreements for National System Employees and Employers, it only has limited power to hear disputes about wage theft. This is usually only while an employee remains employed and there is consent arbitration.

It is extraordinary that the FWC does not have the power to hear wage theft complaints outside of industrial disputes.

⁸⁵ Industrial Relations Act (2016) Section 475 *Power to recover unpaid wages and superannuation contributions etc*, http://www5.austlii.edu.au/au/legis/qld/consol_act/ira2016242/s475.html

This gap in accessible justice is a contributor to the scourge of wage theft so long as the Federal Industrial umpire is sidelined from making decisions on the very instruments it ratifies.

14. The effectiveness of unions

When it comes to wage theft in Queensland, unions seem to be almost invisible.

While it can be argued that current membership is low, and it is difficult to mobilise workers in industries that are transient, or where workers are spread far and wide in small businesses, we believe that unions have an important role to play in helping to combat wage theft through education, awareness, lobbying and representation.

Historic demarcation disputes have carved up industries creating industry-based employee association monopolies. Having only one union per industry limits membership.

Freedom of Association - including freedom from association is a human right.

While workplace laws limit the number member-led employee associations and absolute standing to fight workplace issues on behalf of members, the fight against wage theft in Queensland will be harder.

Similarly limiting who can bargain at enterprise agreement negotiations and giving a special seat for unions during industrial disputes means that Queensland Modern Awards and Certified Agreements takes away non-union members' voices from bargaining.

It also forces them to self-represent, including in industrial disputes about wages. It is both discriminatory and unfair and can inadvertently encourage wage theft against non-union members.

14.1 Hospo Voice

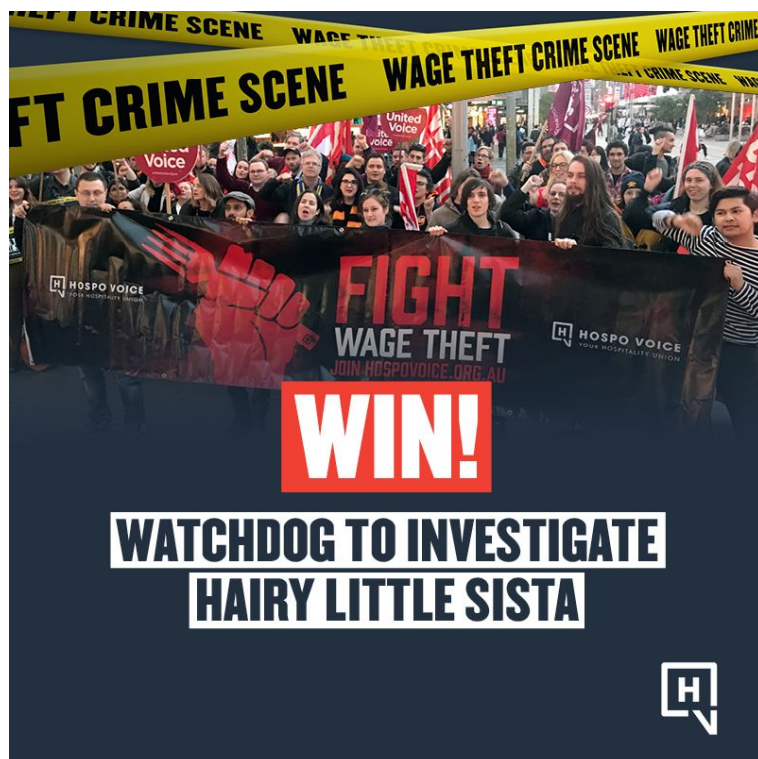


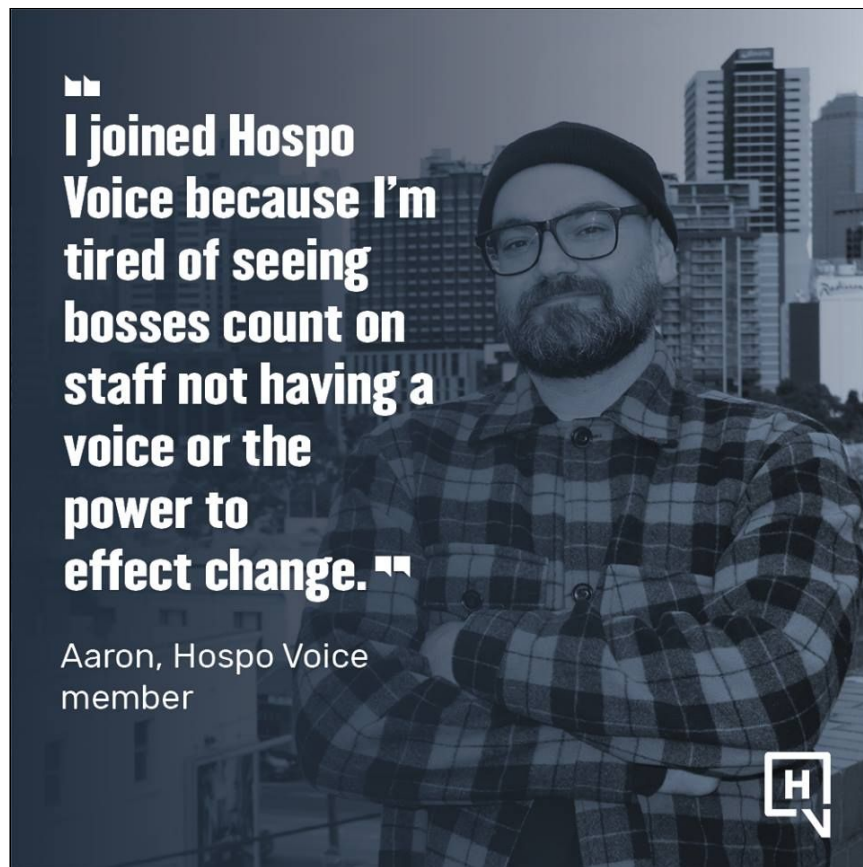
Earlier this year, 'Hospo Voice' was launched in Victoria by the United Voice union to represent workers in the hospitality industry in that state, and it has already had an enormous impact.

In just the first few weeks it has managed to:

- Recruit more than 300 members
- Expose a number of businesses engaged in systematic wage theft
- Organise snap public naming and shaming protests
- Run guerilla-style social media campaigns targeting dodgy businesses
- Attract widespread mainstream media coverage about wage theft cases
- Shamed the Fair Work Ombudsman into launching investigations

Hospo Voice is setting the benchmark for unions fighting wage theft, and is proving that unions can play an important and effective role to help combat the problem.





14. Proposals

1. Wage theft to be criminalised

The definition of stealing in the criminal code for the offence of “Stealing as a Servant” be reciprocated with the same penalties for “Stealing as a Master”, including as it relates to natural person accessories.

This would mean a maximum penalty of 10 years imprisonment.

Industrial Relations Claims (IRC) believes that the imprisonment of employers who commit wage theft will act as a strong deterrent for others tempted to engage in the same conduct.

2. Queensland Industrial Inspectors to become jointly Fair Work Inspectors

Section 700(1)(b) of the *Fair Work Act (2009)* allows the Fair Work Ombudsman in writing to appoint an inspector who is a “person employed by a state or territory.”

Therefore, we propose the state of Queensland write to the Ombudsman and seek written appointment of any inspectors appointed under section 899 of the *Queensland Industrial Relations Act 2016 (Qld)* to be Fair Work Inspectors, and the state to properly fund these inspectors - including in regional Queensland.

Section 899(3)(a) of the *IRA* adds a fourth alternative being a person who is not a public service officer or employee, but has appropriate experience.

We also propose that the *IRA* is amended to define what “a person with qualifications prescribed by the regulations” means.

This means that no matter what happens at a federal level, Queensland workers will have greater protection from wage theft.

3. Affordable access to justice for workers who pursue bosses who have ripped them off

Court filing fees to be immediately waived for all wage theft claims.

The Queensland government to facilitate a pro-bono law service which would provide affordable expert industrial relations advice and representation for victims of wage theft.

4. Penalties to be made payable to workers to cover costs of running a claim

The Queensland government to lobby the Federal government to amend the *Fair Work Act (2009)* s546(3) so that the victim of wage theft (and their representative) who brings a claim is awarded the pecuniary penalty before the Commonwealth or any other organisation.

Section 576 of the *Industrial Relations Act 016 (Qld)* to be amended the same way.

5. The *Magistrates Court Act 1921 (Qld)* Part 5A to include reference to modern awards and other industrial instruments.

Section 42(B)(b) be amended to include breach of contract of employment, adding “Federal Modern Awards, and/or Federal Industrial Instruments” to make it clear that all wage theft claims can be heard as Part 5A claims.

We also propose a practice note would be of assistance for employment claims brought under Part 5A, as it relates to the issue of Federal underpayments arising from terms in Federal Modern Awards and Federal Industrial instruments.

6. Queensland Industrial Magistrate to take a greater role in wage theft matters

We propose the return of a dedicated Industrial Magistrate with trained Industrial Magistrates for the regions.

In addition we propose:

- a. Developing a new Approved Form to make a claim before the Queensland Industrial Magistrate, and for it to refer to relevant sections of both the *IRA* and the *FWA*, to bring claims for civil remedies in the Queensland Industrial Magistrates Court; using the conferred powers under the *FWA*.
- b. Amending the *Industrial Relations (Tribunals) Rules 2011 (Qld)* to include rules for claims brought under s.501 of the *IRA* and/or s.506 of the *IRA* before the Industrial Magistrates Court that enliven s.539 and s.545(3) of the *FWA*.
- c. Adopting the Part 5A Employment Claim approach, when claims brought under s.501 and/or s.506 of the *IRA* that enliven s.539 and s.454(3) of the *FWA* before the Industrial Magistrates Court are referred to a member of the Queensland Industrial Relations Commission, soon after filing, for compulsory conciliation.

7. The Queensland government to lobby the federal government to include equivalent powers of Section 475 in the *FWA*

8. Improved practice direction for wage theft claims brought under section 928 (Offences related to unpaid wages)

Further clarity is needed in the rules, and a practice direction would provide some practical assistance.

9. The Queensland government to lobby the Fair Work Ombudsman to reconsider enforcing the law equally for all workers - without giving “priority” to visa holders

It is clear there is an inequality in FWO investigations and litigations with disproportionate resources being used to chase wage theft against the visa holding workforce, to the detriment of all other victims of wage theft.

A vulnerable worker taskforce could be funded and given appropriate resources to assist visa holders so as to not undermine the important enforcement responsibility for all Australian workers.

10. The Queensland Government to lobby the Department of Immigration and Border Protection to protect visa holders who have been the subject of wage theft

The department should work in lock step with the FWO, and ensure that visa holders who have been the subject of wage theft are protected if their boss has enticed or intimidated them into contravening the conditions of their visa.

11. The Queensland government to lobby the Fair Work Ombudsman to immediately disband its mediation service

The FWO voluntary mediation process is costly and ineffective, and should be disbanded.

It is never acceptable for a worker to bargain away what has been stolen from them.

The Queensland government to lobby to have the funds used for the FWO mediation service to be redirected to boost the number of inspectors on the ground.

12. The Queensland government to set up a superannuation taskforce

The taskforce to convene industry and retail funds and administrators of self managed super funds to come up with a more effective way to track missed super contributions and report true losses of the worker in a timely manner.

The taskforce to then recommend ways to protect workers and alert authorities in a more timely fashion to missed super contributions.

13. The Queensland government to lobby the Australian Tax Office to take a more proactive role in detecting and recovering lost super by introducing random audits of businesses in high risk industries

14. The Queensland government to lobby for changes to legislation to make it compulsory for super contributions to be paid to workers at the same time as their regular wages, whether it be fortnightly or monthly

15. The Queensland government to introduce compulsory education programs into all secondary schools to teach young people about their workplace rights and obligations

Similar programs to be introduced aimed at TAFE students, university and college students, and the long term unemployed.

16. The Queensland government to run a public education campaign on television, radio, print and online, highlighting the seriousness of wage theft, and its impact on victims

17. The introduction of a public register of employers who have been given breach notices under the *Fair Work Act*, and who have been fined with pecuniary penalties for wage theft

A website to be established listing the names and companies guilty of stealing wages so workers can make an informed decision about employment.

This could be similar to the 'Rate My Boss' website already in operation in Victoria through the Hospo Voice union, or mirror how professional bodies publicly disclose breaches of code of conduct.

18. Legal firms and industrial advocates to be given the authority to bring claims with absolute standing

Non-trade union members to enjoy the cost saving and efficiency of claims brought on their behalf by non-registered industrial organisations.

These non-registered industrial organisations to be accredited to bring wage theft claims as the claimant on behalf of multiple victims of wage theft.

19. Registered trade unions in Queensland to do more to combat wage theft

Given the enormous power of trade unions, including right of entry, and right to inspect records, they are in the box seat to fight wage theft employer by employer for their members.

We call upon them to take a look at the Victorian Hospo Voice model - and do more.

Unions to take a more proactive role recruiting and mobilising members in high risk industries like hospitality, and to then actively advocate for those members, through public and social media campaigns, and helping them to recover stolen wages.

“Until there is meaningful change by governments at both a state and federal level, and in workplaces across Queensland, then Justice Jessup’s words will remain true:

‘The Fair Work Act risks being mere words on a statute book’

“It is ALL of our responsibility to make the Fair Work Act - fair again.”

**- Miles Heffernan
Industrial Relations Claims**

Attachment

Sample of calculations for six years of underpayments for Thomas Ruscoe-Jones

Day	Date	Time start	Time end	Break Time (hh:mm)	Total hours worked	Weekdays Ordinary hrs	Weekdays Overtime hrs (first part)
Mon	27-Jun-16	7:30 am	4:30 pm		9.00	5.00	4.00
Tue	28-Jun-16	7:30 am	4:30 pm		9.00	5.00	4.00
Wed	29-Jun-16	7:30 am	4:30 pm		9.00	5.00	4.00
Thu	30-Jun-16	7:30 am	4:30 pm		9.00	5.00	4.00
Fri	1-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Sat	2-Jul-16				-	-	-
Sun	3-Jul-16				-	-	-
Mon	4-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Tue	5-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Wed	6-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Thu	7-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Fri	8-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Sat	9-Jul-16				-	-	-
Sun	10-Jul-16				-	-	-
Mon	11-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Tue	12-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Wed	13-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Thu	14-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Fri	15-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00
Sat	16-Jul-16				-	-	-
Sun	17-Jul-16				-	-	-
Mon	18-Jul-16	7:30 am	4:30 pm		9.00	5.00	4.00

Week	FY11		Weekly		28 Days	
	Period	Total hours	Overtime (first part)	Overtime (thereafter)	Overtime (first part)	Overtime (thereafter)
1	20/10/10 - 26/10/10	9.50	-	-		
2	27/10/10 - 2/11/10	44.00	3.00	3.00		
3	3/11/10 - 9/11/10	47.50	3.00	6.50		
4	10/11/10 - 16/11/10	44.00	3.00	3.00	-	-
5	17/11/10 - 23/11/10	47.50	3.00	6.50		
6	24/11/10 - 30/11/10	44.00	3.00	3.00		
7	1/12/10 - 7/12/10	47.50	3.00	6.50		
8	8/12/10 - 14/12/10	44.00	3.00	3.00	3.00	28.00
9	15/12/10 - 21/12/10	47.50	3.00	6.50		
10	22/12/10 - 28/12/10	44.00	3.00	3.00		
11	29/12/10 - 4/1/11	38.00	-	-		
12	5/1/11 - 11/1/11	44.00	3.00	3.00	3.00	18.50
13	12/1/11 - 18/1/11	47.50	3.00	6.50		
14	19/1/11 - 25/1/11	44.00	3.00	3.00		

Day	Date	Time start	Time end	Break Time (hh:mm)	Total hours worked	Weekdays Ordinary hrs	Weekdays Overtime hrs (first part)
Mon	1-Jul-13				-	-	-
Tue	2-Jul-13				-	-	-
Wed	3-Jul-13	8:00 am	5:30 pm		9.50	5.00	4.50
Thu	4-Jul-13	8:00 am	5:30 pm		9.50	5.00	4.50
Fri	5-Jul-13	8:00 am	5:30 pm		9.50	5.00	4.50
Sat	6-Jul-13	8:00 am	2:00 pm		6.00	-	-
Sun	7-Jul-13				-	-	-
Mon	8-Jul-13	8:00 am	5:30 pm		9.50	5.00	4.50
Tue	9-Jul-13				-	-	-
Wed	10-Jul-13	8:00 am	5:30 pm		9.50	5.00	4.50
Thu	11-Jul-13	8:00 am	5:30 pm		9.50	5.00	4.50
Fri	12-Jul-13	8:00 am	5:30 pm		9.50	5.00	4.50
Sat	13-Jul-13	8:00 am	2:00 pm		6.00	-	-

Employment status:	Full-time
Start date:	25-Oct-2010
End date:	01-Oct-2017
Total employment period	6 years, 11 months, 0 days
Total weeks	362
Total pay weeks	363

Start (Pay Date)	End (Pay Date)	Award Year	Employment Type	Base rate	Overtime (150%)	Overtime (200%)	Pay weeks
4/1/2011	28/6/2011	FY11	Full-time	\$ 16.57	\$ 24.86	\$ 33.14	36
5/7/2011	19/6/2012	FY12	Full-time	\$ 17.14	\$ 25.71	\$ 34.28	51
3/7/2012	30/6/2013	FY13	Full-time	\$ 17.64	\$ 26.46	\$ 35.28	54
16/7/2013	30/6/2014	FY14	Full-time	\$ 18.09	\$ 27.14	\$ 36.18	52
15/7/2014	30/6/2015	FY15	Full-time	\$ 21.48	\$ 32.22	\$ 42.96	52
14/7/2015	28/6/2016	FY16	Full-time	\$ 22.02	\$ 33.03	\$ 44.04	52
12/7/2016	27/6/2017	FY17	Full-time	\$ 22.55	\$ 33.83	\$ 45.10	52
11/7/2017	3/10/2017	FY18	Full-time	\$ 23.29	\$ 34.94	\$ 46.58	14

Start (Pay Date)	End (Pay Date)	Award Year	Employment Type	Base rate	Overtime (150%)	Overtime (200%)	Pay weeks
4/1/2011	28/6/2011	FY11	Full-time	\$ 16.57	\$ 24.86	\$ 33.14	36
5/7/2011	19/6/2012	FY12	Full-time	\$ 17.14	\$ 25.71	\$ 34.28	51
3/7/2012	30/6/2013	FY13	Full-time	\$ 17.64	\$ 26.46	\$ 35.28	54
16/7/2013	30/6/2014	FY14	Full-time	\$ 18.09	\$ 27.14	\$ 36.18	52
15/7/2014	30/6/2015	FY15	Full-time	\$ 21.48	\$ 32.22	\$ 42.96	52
14/7/2015	28/6/2016	FY16	Full-time	\$ 22.02	\$ 33.03	\$ 44.04	52
12/7/2016	27/6/2017	FY17	Full-time	\$ 22.55	\$ 33.83	\$ 45.10	52
11/7/2017	3/10/2017	FY18	Full-time	\$ 23.29	\$ 34.94	\$ 46.58	14

Summary	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	Total
Weekly - Ordinary and Overtime									
Ordinary hours - between 0 and 38 hours	1,323.00	1,911.00	2,020.50	1,640.50	1,788.50	1,840.00	1,674.00	444.00	\$ 12,641.50
Overtime - first 3 hours between 38 and 41 hours	90.00	126.00	132.00	96.00	114.00	114.00	108.00	27.00	
Overtime (hereafter) - after 41 hours	139.00	199.50	167.00	138.00	179.00	152.00	144.00	16.00	
Total award amount	\$ 28,765.52	\$ 42,832.86	\$ 45,026.10	\$ 37,274.45	\$ 49,779.90	\$ 50,976.30	\$ 47,896.20	\$ 12,029.29	\$ 314,580.61
Total wages paid - excluded leave and bonus	\$ 29,943.26	\$ 44,308.46	\$ 43,865.38	\$ 36,250.00	\$ 44,788.49	\$ 49,499.85	\$ 44,904.48	\$ 12,057.66	\$ 305,617.58
									Variance - Under / (Over) Pay \$ 8,963.03

ADDITIONAL OVERTIME								
Daily - Weekdays								
Overtime - after 5 hours of Ordinary hours	633.00	910.50	943.50	733.50	842.50	936.00	856.00	202.00
Overtime - between 7pm to 10pm (Thursday night)	34.00	50.00	22.00	-	-	-	-	-
Total overtime pay amount	\$ 16,578.29	\$ 24,694.46	\$ 25,547.13	\$ 19,903.52	\$ 27,145.35	\$ 30,916.08	\$ 28,954.20	\$ 7,056.87
								Total overtime pay \$ 180,795.89
Saturday								
Overtime - between 12pm to 3pm	70.00	102.00	108.00	119.00	99.00	-	-	-
Overtime (hereafter) - after 3pm	-	-	-	31.00	33.00	-	-	-
Total overtime pay	\$ 1,739.85	\$ 2,622.42	\$ 2,857.68	\$ 4,350.65	\$ 4,607.46	\$ -	\$ -	\$ -
								Total overtime pay \$ 16,178.06
28 Days - Overtime exceeded 152 hours / 28 days								
Overtime - first 3 hours between 152 and 155 hours	23.50	35.50	36.00	21.00	30.00	28.00	21.00	4.00
Overtime (hereafter) - after 155 hours	167.50	257.00	224.00	135.50	185.00	171.00	148.00	15.00
Total overtime pay amount	\$ 6,135.04	\$ 9,722.67	\$ 8,855.28	\$ 5,472.23	\$ 8,914.20	\$ 8,455.68	\$ 7,385.13	\$ 838.44
								Total overtime pay \$ 55,778.66
								Total Underpayment \$ 261,715.64

28.00	21.00	4.00
171.00	148.00	15.00
8,455.68	7,385.13	838.44
Total overtime pay		\$ 55,778.66
Total Underpayment		\$ 261,715.64

Appendix A

Case studies contacts

Each of the following victims of wage theft is prepared to give evidence to the inquiry

Case	Name	Address	Number	Email
#1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
#2	Kay Clifton	[REDACTED]	[REDACTED]	[REDACTED]
#2	Carolyn Bridges	[REDACTED]	[REDACTED]	[REDACTED]
#3	Aiden Martin	[REDACTED]	[REDACTED]	[REDACTED]
#4	Alanna West Lisa Thomas (mum)	[REDACTED]	[REDACTED]	[REDACTED]
#5	Tomy Wirawan	[REDACTED]	[REDACTED]	[REDACTED]
#6	Thomas Ruscoe-Jones Eva Rankmore (wife)	[REDACTED]	[REDACTED]	[REDACTED]
#7	Kym Rake	[REDACTED]	[REDACTED]	[REDACTED]
#8	Jamie Gardner-Hudson	[REDACTED]	[REDACTED]	[REDACTED]
#9	Kasey Cockburn	[REDACTED]	[REDACTED]	[REDACTED]
#9	Leanne Andrews	[REDACTED]	[REDACTED]	[REDACTED]
	Tim Dunne	[REDACTED]	[REDACTED]	[REDACTED]
	Daniel Hogg	[REDACTED]	[REDACTED]	[REDACTED]

The following from Industrial Relations Claims are available to give evidence

Name	Position	Number	Email
Ruth Gardner	Forensic Recoveries Officer	[REDACTED]	[REDACTED]
George Calderon	Lawyer - Fair Work Employment Lawyers and seconded consultant	[REDACTED]	[REDACTED]
Miles Heffernan	Litigation Director	[REDACTED]	[REDACTED]

Please note Ruth Gardner is only available on 16 August 2018 as she will be travelling on the 20th.

Appendix B

Phone Interview - Kym Rake

4 July 2018

What sort of work did you do and how long had you done it for?

I was a truck driver and I was with the company for seven years.

And when did you realise that something wasn't right with your pay?

Pretty well straight away. We used to keep asking them about the wages and we were the lowest paid in the industry, and they'd just say, 'well you're getting paid too much now'.

How would it work?

They used to ask you how many hours did you want to be paid and they'd 'bank' the others, and if you wanted a day off, they'd just take it out of your 'banked' hours.

What did you think about that practice at the time?

Well it didn't worry me because I was glad to get away from them for a while. But it's pretty sticky.

Did you know at the time that it was dodgy?

Well I thought it might have been but you know, - a lot of time we'd do 17/18 hours straight, and the next day, they'd say to just take four hours out of the next day, so I'd get the 10 hour day.

To make up the extra time that you worked the day before they said just start a bit later?

Yes that's right.

Did you realise that you were missing out on money?

I knew they weren't paying the right rate, that's for sure, but there's nothing you can do, what are you going to do? You go and ask them and they just sort of pfffft. You know.

What would they say when you asked them about your wages?

They used to say that we were overpaid - they would say, 'oh you're overpaid now'. And we wouldn't even get CPI - we'd go 12 months and we'd hit him up for pay rise and we'd get a dollar, and by that stage we'd be four or five dollars behind everybody else.

Did you ever think to go the Fair Work Ombudsman - either ringing them or going to their website?

We went to them and it was a waste of time mate.

Why? What happened when you went to the Ombudsman?

I rang em up, and explained all me story, and I had all my diaries - every hour that I had worked, every pay slip they ever gave me - I had everything in my possession and they sort of said to me, 'oh what rate are you getting paid?' and I told em, and they said 'oh you're getting done', I said, 'I know that' - and they said, 'well, we can give you the rates for three years', and I had to work it out myself, and they said 'the previous four years to that we would have to go to the archives to get the rate for ya' - and I said 'alright, that gives me three years to start on' so I worked out what I got paid, what I should have got paid, and then I rang em up three weeks or so later and said to this girl, I said, 'oh I'm just waiting for a call back because you've got to look up in the archives what my previous four years to 2012, what the pay rate was' and she goes, 'if you've made an inquiry, you're in the queue', and she just hung up on me.

How did that make you feel at the time?

Ah, terrific!

So I rang back and got someone else, whose name was [REDACTED], or some bloody thing, and I said to him, 'mate this is pretty shoddy', and he said, 'there is nothing that we can do, if you've made an inquiry, you've just got to wait in the line until we get to you' - and I still haven't heard from them, and it's been like, nearly three years now.

So it's been three years and you still haven't heard back?

Nothing, not a word.

Did you have any more contact with the Ombudsman after that?

No, nothing. After that I just washed my hands of them, I thought well if that's the way it's going to be, then I rang Miles.

Based on your experience, how would you describe the effectiveness of the Ombudsman?

Mate, if that's coming out of my tax money, then I'm not real happy with them at all, because they just seemed to be ignorant, they just didn't want to know.

They just said, 'oh yeah, how do you know that you're not getting paid and I said, 'I know I'm not getting paid the right rate because other people like the blokes who work for [REDACTED] are getting five dollars more an hour more than us plus penalties - and we were getting nothing.

And you said you had your pay slips, and you had a diary detailing all of your hours?

I had every pay slip they ever gave me, I had all my hours in diaries, every job I ever did. I wrote it down. If I got to a job at 10 o'clock I wrote down where it was, and when I got to the next job.

Nine times out of ten, we never stopped for lunch, because we were just too busy, and then they'd just say, 'oh well, that's your fault, you didn't stop'.

The fact that you had all that evidence - did the Ombudsman say we want to look at that evidence, bring it in - it looks like you've done your homework, we'll look into this?

Yeah I told them I had all of that, and they said, 'oh okay', and that was it.

How do you feel that you had to go through a private firm to try and recover what you were owed?

Well, when I first started out, I thought well, if he takes 10 or 20 percent or whatever he takes, because 20 percent of what I've got now is still zero, so I wasn't really worried. I thought good for you Miles if you can jack some money out of these fellas, because I couldn't get it.

And how long did that process take - working with Industrial Relations Claims?

I reckon it was all done and dusted within 12 months.

How would describe that experience compared to your experience with the Ombudsman?

Mate, they weren't interested.

When I rang up enquiring about me, because they said, 'oh somebody will ring you' and after three weeks, nobody had rung me, so when I rang back to inquire, this sheila says 'well if you've made a complaint, you are in the queue, and we'll be in touch' and hung up.

Part of your wage theft was superannuation - is that right?

Yeah, I was in a salary sacrifice agreement with them - \$300 bucks a week - and I got up to \$10,000 and I said to him, 'where's me salary sacrifice?' - and he said 'oh the account has got the books' or 'you gave me the wrong super account number', I said, 'you've had it for seven bloody years!' There's always an excuse.

He was pocketing the money wasn't he?

Yeah, it was going into the family trust - they were putting nothing into my super - and when I challenged him, he eventually paid me \$8,000 but there was still I think it was about \$7,000 or \$8,000 owing - so I said to him, 'I'll just take that in time'.

So I took about five weeks off, and said 'I'm out of here' and I tried to look for another job in the meantime, but there was still nothing around so it was pretty quiet at that stage, and eventually I went back and I said to him, 'take the rest, and put it in saved hours, and I just had long weekends and I'd knock off Thursday and go back Tuesday just more to muck em around than anything, but I thought they're not getting away with what they owe me, so they just paid me that on an in-lieu basis.

All the interest I lost on that, I would like to get that back, but that's how it goes.

How does it feel that you were cheated out of that super and the interest that it would have earned?

Yeah well that's just thievery - that's my money, not his, and he's taking it out of my pay and putting it in the family trust and never saw it ever again. Unbelievable.

How did the underpayments affect you personally?

We used to have to do 60 - 75 hours a week just to make a decent wage.

Because they weren't giving you penalties, overtime, all that sort of thing?

No. Never got a meal break - anything.

Did you have trouble paying bills?

Yeah, it got a bit rough at times, but you just sort of push through and keep going and do your best.

Have you recovered all the money that you were owed?

I didn't get it all.

How does it make you feel, that you haven't been able to recover everything that you are owed?

Every time these people - somebody would say something to them - they would say, 'we don't pay that', like somebody would say, 'how bout Saturday giving us time and a half?' and they'd say, 'oh we don't pay that'.

And just to get some money out of them really hurt them - it really did - it made em bleed.

Do you think it's too easy for employers to rip off their employees?

Yeah totally mate.

They decide what they're going to pay you - it's got nothing to do with any award or anything else, it's just - that's what we pay. And you just have to put up with it.

I would really like to see someone go out there and go through em, you know, like go through their books.

Do you hold any hope that the Fair Work Ombudsman would do that?

No. I don't have any hope with them at all.

As I say, I give up on them, they're hopeless.

Should wage theft be made a criminal offence?

If I stole from him - the way he stole the money that was supposed to be going into my super - if I did that to him, I'd be in jail.

Queensland has always been the same - [REDACTED] money, no conditions, you just got to do what you've got to do.

Appendix C

Phone interview - Kay Clifton
4 July 2018

You and Carolyn worked for a number of years in the medical practice?

Yeah, practice manager and assistant. I was the manager and she was my assistant. And yeah, 16 years I was there.

When the business changed hands, the new owner said, I'm not paying you your redundancy and entitlements?

He demanded from the old owners our pay. Well, he said to them, 'you pay me, and I will pay Kay and Carolyn', and stupidly they did - and he held onto the money.

So six months it took us to get, and it was only when we engaged the services of Miles, that Miles with his tenacity managed to get it for us.

Even then it wasn't the full payment, and six months is to be quite honest, I nearly ended up on the street, if it wasn't for my father, because at the time I was going through a divorce, and a property settlement, and because I had lost my job, I had to give up my townhouse, and if it hadn't been for my father, who propped me up financially, I would have been on the street.

It sounds like you were in dire straits?

Well I was, and none of them would get back to us, he just kept promising, 'yes it will be in the bank, yes it will be in the bank', and Fair Work - the government ombudsman - did nothing, absolutely nothing - they were useless.

And yet they go after the little fellow down at the fish and chip shop at the end of the street because he doesn't pay his workers for half an hour overtime, yet someone who steals this amount of money from you - and a big corporation - they don't bother.

What did the Fair Work Ombudsman specifically say to you?

They just said at the end of the day, we can't force him to pay it, and you may have to engage legal services, and I thought isn't that what the government department is for?

And he must have known that, because he wasn't worried by the threat of Fair Work at all. He just sort of basically thumbed his nose at us.

How much money were you owed?

Mine was it was about \$45,000 and Carolyn's was about 30-odd.

And how much were you left with after the legal action?

After I paid Miles, I ended up with just under \$30,000.

The settlement figure was \$40,000. And then after you take out fees, I ended up with just under \$30,000 and then of course I had to pay back my father, and so you end up with stuff all.

So in the end, you never got back all that you were owed?

Not having that money for six months, I had to pay credit card interest, it was hard.

For myself, it was a really stressful, stressful time. I didn't have a husband or a partner that could support me, only my dear old dad - and he's a pensioner.

What would have happened if you didn't take legal action yourself?

We would never have seen it, we would never have got the money. He wasn't interested in paying us back - he was a real [REDACTED] to be totally honest.

Appendix D

Phone Interview - Carolyn Bridges

4 July 2018

What was the experience like for you?

It was very stressful, obviously. And I suppose what was really stressful was the fact that the people that used to own the medical centre, they sold to this guy called [REDACTED], who owns [REDACTED] with another doctor.

Apparently the firm - they paid everything out to him, instead of paying Kay and I our long service and redundancy and holidays - instead of it being paid to us, it was paid to him, and he was the one that held onto the money, and you know, just didn't want to pay.

And the only time that we did sort of get any action from him, originally we contacted the old partners about our redundancy money and he came forward and paid that - minus the five weeks in lieu we should of had because we didn't have any notification that we were being made redundant.

And we got nowhere, and then we went to the Fair Work Ombudsman and [REDACTED] just virtually said, "I'll look into it, I'll get back to it", it was always, 'yes I'm going to pay it, I know I've got to pay it,' but it never came.

So then we went to Miles, at Industrial Relations Claims and they were just fantastic. They were really good.

Can I just stop you there - can I ask you about the Fair Work Ombudsman - how would you describe how they handled your situation?

They're a barkless dog. That's how we found it. They were a barkless dog.

I can't speak for all the Fair Work Ombudsman, but the woman we were dealing with [REDACTED] somebody or other, she was, we could never get hold of her, and if she was going to ring you back, it would be about three or four days later, so in the end, we used to email, but even then, it would be to say, 'well have you heard anything, what's going on?' and it was like, I just found them a waste of time.

They are useless - they really are.

What impact did it have on you financially - did it put you under stress financially?

Yes it did, in that because I'm older than Kay, I decided that I would just retire, you know, and I did have a little bit behind me, nevertheless, bills still keep coming in.

The impact wasn't as great on me, as it was on Kay, because for her, she was going through a separation from her husband, she'd lost her job, and it just went on and on for her.

It is a very stressful time because we'd think, yes it's all settled, that's it, good oh, and then nothing.

We reached the point where we thought we would never be paid.

How frustrating was it - it sounds like he's just waiting for you to give up and go away isn't he?

Yes yes - most definitely, you know, I mean, I just felt that it was never going to be paid.

At the time I was a bit disappointed and angry and frustrated with the people that we had worked for, because if they had just paid us out, like they should have done, we wouldn't have been in this situation.

But they had paid it in good faith that this guy was then going to pay on, and he didn't - not without a lot of hassle.

You were owed roughly 30 - is that right?

No, I was around 37 all up.

How easy is it for employers at the moment to rip off their employees if they want to do it?

Very easy - very easy - because a lot of the problem is that I think - that people in our situation don't know where to turn. They go to the Fair Work Ombudsman who's useless - and it was only the fact that Kay was googling Fair Work and she happened to see Miles' company come up - and it went from there.

People don't know what to do so they give up. My husband said to me, he just wants you to give up - he thinks this is all going to be too much stress for you, because there were days when I would say, 'I just can't cope with this anymore, this back and forth', you know, and he said, that's exactly what he wants - he wants you to give up and then he's pocketing all those entitlements.

It's not a pleasant experience and it has been made a lot easier because of Miles and James and all the guys, they were always helpful, and getting back to us and emails and things like that.

Should you have to go to those lengths - employ a firm and threaten legal action to recover what's owed to you - how do you feel that you had to do that?

To get the money that I was owed, it cost me \$7,000. Which I'm not griping about - that's what I personally paid to Miles' company, because without paying that, I wouldn't have got anything.

But Kay was something around \$10,000, but why should we have to pay what was rightfully ours.

It did actually get our noses out of joint, if you know what I mean, yeah.

As it went on and on, we were just grateful to Miles and everybody that we got something back.

What sort of changes would you like to see change when it comes to wage theft in Queensland

I believe wage theft should be made a criminal offence, I do, definitely, I really do.

Why?

Well, because under the industrial laws that are in place, there is a fine that can be imposed on the perpetrator and at the judge's discretion that can be paid to the people who have been robbed - but that's really... well not good enough.

They're getting away scot free, and if they've done it once, they're going to continue to do it, and I think if the worker can be criminally sentenced to a prison term, then so should an employer.

It's just fair across the board - the scales are tipped

That's something I find with governments - they're either all for the workers and not the employers, or they're all for the employers and not for the workers - and it causes this imbalance all the time.

So if it was across the board, even for both sides, I think that would be fair.

Should workers be reimbursed for the cost of pursuing unpaid wages?

Yes - yes it is - otherwise

Even though the penalties may get paid, they just go into the government coffers, so I don't really think that's fair.

As nice as having the extra money is, you know, that you're entitled to, I would rather, if it was a choice between the two - I want to see the employer criminally charged - and jailed, because if he's done to one person, he's got no scruples, and he's going to do it to the next and the next and the next.

Appendix E

Phone interview - Alanna West

4 July 2018

Did you know at the time that you weren't being paid the correct award rate?

Yes, It was maybe the first six months I got the group certificate and my mum noticed a few things, and she pointed it out and they completely denied things saying that I needed to be 18 to be paid correctly, and paid superannuation and all this other stuff.

So they said you had to be 18 to be paid super?

Yeah yep. They weren't paying me super either, as well as underpaid wages, because I was only 15 at the time, and they thought that I had to be 18 - they believed - or was told that I had to be 18 to receive any type of superannuation.

And you weren't given breaks either? Did you feel like you should be having a lunch break or morning break?

I knew it was wrong. I went and got their lunches instead of eating mine.

Did you ever challenge them on that, you know, I should be having lunch, I should be having a break?

When I did - I got sworn at, and that's when I had enough - I took a lot of [REDACTED] from them before I decided to snap - and when I snapped that's when he made me resign.

What impact did it have on you at the time - because you were quite young at the time?

Yeah it was pretty difficult at the time - because I had left school for it - so for him to do that to someone who was only 15 years of age was pretty severe.

You know, because I worked hard for my money, and already as an apprentice, you're only on eight bucks or seven dollars an hour - and when he was ripping me down to 5 dollars an hour - or 4 dollars an hour - it was hard work when I was going over 40 hours per week at such a young age.

How would you describe the way you were treated?

Um, pretty poorly - they made me feel like I was the smallest person in the world and they were the biggest people. They made me feel tiny - and that I was useless - and that I didn't have any say in what was going on.

Did you or your mum go to the Fair Work Ombudsman to get some help or make a complaint?

Yes, my mum did.

They gave us advice and said that we had a right to bring it up with the boss and that we should try and come to an agreement - try and meet up in person about it, and have a conversation, but my boss wasn't prepared to do that.

So the Fair Work Ombudsman basically said get together and have a mediation with your boss - and sort it out yourself?

Pretty much - but they didn't want to meet up at all.

Did the Ombudsman take any further action against your boss?

I think they might have contacted him a few times, but they weren't that harsh on him to be honest, they said this is what you're going to have to do - and my boss agreed to do it but then never got it done - never paid me.

Did you get back everything that you were owed?

No.

I only got back \$15,000, but after I paid the fees for Industrial Relations Claims, I think I was left with around \$11,000, which I understand, but I don't think is very fair because that has come out of the money that I was owed in the first place.

What about the impact financially - what impact did it have?

I lived out of home at that time, I lived with my partner at the time, so paying rent, I couldn't really afford to pay it, he had to pay, I could barely pay my car - it really put a big strain on me.

I ended up getting myself into debt with my partner's family at the time because I couldn't afford to pay rent every week - so I ended up having to move home for a while to get back on my feet and pay everyone off.

Have you got a new job?

I have decided to go into hospitality because hairdressing industry - I can't deal with things like that - I never want to go back - it turned me off hairdressing completely.

I have a passion but I just couldn't do it anymore.

Appendix F

Phone Interview - Tim Dunne
5 July 2018

What work do you do - and who do you work for?

I'm a gyprocker - and it's at the Australian Catholic University - [REDACTED] - that's the builder but I was subbed out from [REDACTED]

How much work have you done there and haven't been paid for?

I worked it out they owe my 90 hours of work.

What have they told you?

They said, well we've gone into voluntary liquidation - we've gone bust - we can't pay it.

It's not just me, they haven't paid anyone.

There's about 200 grand owing.

For that 90 hours - how much are you out of pocket?

40 bucks an hour - \$3,600.

That's really important to you - because you've got to pay for your son's school fees?

I'm here now - to talk to the builder to say -

My son's education rides on this money. I've got a special needs son, he's got autism, and he goes to a very expensive school - it's \$300 bucks a week - and because I didn't get paid for those weeks - those payments didn't go through.

Now I haven't been able to back pay that money.

They've already been calling saying that this school isn't free - and I understand their point of view - it's just a bad situation, it's not ideal that I don't have the money there anyway - but I just went through a separation which left me broke basically. It hasn't been a very good run for me.

Was there any indication that this mob were going to go bust?

No, I had no idea.

I got a text on Saturday morning to not go to work

And then when I went into work on the Monday to hand in my invoice - they text me back later that day - 'oh mate we've gone bankrupt - the company has gone into voluntary liquidation'.

All I know is the owner of [REDACTED] lives in a big house - and he's got money - I'm sure of it.

Appendix G

**Phone Interview - Thomas Ruscoe-Jones
July 4 2018**

What did you think when they calculated that you were owed \$260,000?

I was amazed when I found out that - I never realised it was that much that I was getting jipped on.

How did it make you feel that you were being ripped off to that extent?

Yeah, pretty bad when you find out that you've been ripped off for that amount, especially after you've put so much effort into the company over the years.

You went to the Fair Work Ombudsman - and you got some information from the website about your correct rates and breaks - what did the company say when you took it to them?

They basically just laughed at me and said there was nothing I could do about it.

Did they kind of admit that they were underpaying you?

No - the whole time they have maintained that they did nothing wrong.

They just claimed that because I was on salary, they didn't have to pay it - no overtime at all.

We were getting paid for 38 hours, but we were working 47 - 48 hours a week.

What about breaks - what excuse did they give for not giving you proper breaks?

They just said you don't get breaks because there is no one else to cover the position.
So you can't just leave the counter, because customers might come in.
And they said, if you want to eat, just eat at your counter while you work.

It took 12 months of fighting to get to the bottom of it?

Yeah it took 12 months of fighting them.

Miles and them were really good, I was really happy with the result in the end, but it was really stressful - it took a lot of time and a lot of stress to get there.

Do you think you should have to go all the way of threatening court action to get an employer to do the right thing?

Of course not, they should do the right thing to start with.

I mean, even from an employer's point of view, they are out to make as much money as possible, but it shouldn't be to the extent that you rip off the people who are actually making that money for you.

Is it easy for employers to rip off their employees?

From what I've seen it's all too easy thing for them to do.

And they just bully the staff into not doing anything about it.

They even tried with me when I told them I was taking it through to court, and they kept threatening me and saying I would lose everything - just to try and get me to drop it.

Do you think your work colleagues were also being ripped off?

Yeah. I'm sure they were doing it to a lot of people over the years.

How does it make you feel that they are able to get away with it like that?

It's pretty disgusting really.

How does it feel that you had to spend money to try and recover the money that was rightfully yours?

I'm better off than what I would have been if I hadn't chased it up - but yeah, you shouldn't have to do it in the first place.

What do you think needs to change?

I think wage theft needs to be criminalised because it would give employers a bit more of a reason to do the right thing.

At the moment, they've got no reason to do the right thing, so they just rip people off. They get away with it because they can.

Because, unless someone goes to the extent that we did - what's to stop them doing it to the next person and the next person after that.

What impact did it have on you?

It caused so much stress, and I'm sure it didn't help mine and Eva's relationship - coming home from work every day upset and pissed off knowing that you've been ripped off and knowing there is nothing that you can do about it.

And then, for the twelve months that we were fighting them - it was really stressful with the threats hanging over us - because they said they were going to sue me and I was going to end up with nothing - it wasn't a fun experience.

I'm glad it's all over.

Appendix H

In-person interview - Eva Rankmore (wife of Thomas Ruscoe-Jones)
4 July 2018

What did Tom do at [REDACTED] and how long was he there for?

11 years.

He worked spare parts and accessories - and was the accessories manager and service manager.

He was getting paid the standard 38 hours, but working a lot longer than 38 hours every day without breaks.

By the time you took action, how much had been underpaid?

It was over \$200,000 - something ridiculous.

That was with penalty rates because after so many hours, it's supposed to be time and a half and then after so many hours in a week, it's supposed to be double time and he was working Saturdays and not being paid for Saturdays.

What did you think of that amount?

We were gobsmacked, because that's with penalty rates - where we weren't thinking of penalty rates - we were just thinking - he's working this many hours extra a week - if I was paid my standard rate - this is how much I think I would be owed.

Did you guys know at the time that something wasn't right?

He did know that he should be getting breaks, so his main focus to start with was the breaks - and he had the original documents printed out from 2014 and think it was even earlier from the Fair Work Ombudsman website about breaks, and he took them to the admin lady who did the pays and accounts.

What was their response?

They basically brushed him off telling him that that's how everyone is - that's how the industry is.

Why did he take action when he did?

Because of me.

I was trying to get him to quit - and then I found out that it wasn't right what was happening to him.

I asked Miles and he said we can do something about that.

What impact did the underpayments have on your life?

It was very stressful because this took over 12 months and they were making his life difficult.

When they didn't comply with the request for records, and then they were threatening to have a performance review with Tom - which they've never done, so George the lawyer went in to be a support person - and they just treated George like [REDACTED] - And said the documents might be in the storage room downstairs.

When we asked for Tom's employment records they claimed they had this storm go through this store and this storm go through that store in this year and that year - and that's why we don't have the documents.

What difference would it have made if he was being paid what he was entitled to?

It probably would have made a fair bit of difference cause I mean we own our own house and it needs bits and pieces done to it - and we can't afford to do - so if he had of been getting paid a higher amount, we would of had more funds towards that.

How easy is it for employers to rip off their employees?

I think it is too easy because we were lucky that Miles charges the fees that he does - because if we had had to pay a lawyer by the hour, their tactics would have worked. We would have given up.

What tactics are you referring to?

They used delaying tactics - they just refused to respond to our requests for records, they just ignored it, and refused to provide anything.

Then they claimed they didn't refuse - saying that they were available to him - they've always been here - we've always fully cooperated.

I think they were just trying to draw it out, hoping we would go away - and it wasn't until their first Federal Circuit Court appearance where the judge had a go at them about self representation and suggested they get representation - that's when it got a little more serious - and they got a solicitor.

Should you have had to go to that length to get what you're rightly entitled to?

No, we shouldn't have to go through such a long drawn out process - it's ridiculous - we had to pay more than a \$1000 in court lodgement fees and mediation fees.

And you never get those fees reimbursed?

Exactly. And we were warned that the specific judge we had that if the civil penalties were awarded - he doesn't award them to the application - they get awarded to the state.

So you are out of pocket chasing what you are entitled to?

Yeah, well the biggest concern was if it went to court - and they got the civil penalties against them - they would just go bankrupt, and we wouldn't see a cent.

What did you get in the end?

They didn't pay lost wages - they still didn't admit to actually underpaying him. They just decided to make a general damages settlement to make it go away. It was 50 grand.

How does it make you feel that he is owed 260 grand and you've got to settle for 50?

It's a bit [REDACTED]

Like 260 grand just seems way too high, but our first offer was 50 cents on the dollar - so we would have been really happy if they had settled for half of the original amount.

Do you think it's too easy for employers to rip off employees?

They've been systematically doing it - for at least 11 years that Tom has been there - they've been around much longer so they would have been doing it the whole time.

What do you think needs to be changed as far as wage theft is concerned?

I think it should be a criminal offence and I don't know how you can make it easier - but I think it should be easier - like you shouldn't have to go through the Federal Circuit Court to get what's owed to you.

Anything else you wanted to add?

They completely destroyed his chances of getting another job in the industry as part of the process.

They made it public to other businesses within the industry - we don't know who specifically - but as part of the interview with another company, he was asked about his litigation against his current employer.

Appendix J

Phone interview - Tomy Wirawan
5 July 2018

What did you do during the six months of work experience?

They made me do work.

They sent me to the bank, I made payments, I was doing conveyancing, so I had to do background checks, title searches.

I also did social media for them - so I went on their website and improved their website - I made their facebook page - I made them a LinkedIn company profile - so I actually did some IT stuff outside of law - because I had some expertise in that area - and they were very keen to use my skill set in that area as well.

So you were doing work that a paid employee would normally do?

I was doing work there that people there were doing as well.

What did they tell you about getting a job?

The first step was three months probation - unpaid.

When I had the interview with [REDACTED] he said let's have a look at you for one month, and after one month, if you perform well, we'll hire you - but then he sent me an email, and it said three months probation.

After three months, when I started making enquiries about the job, it started going down hill.

They said, 'oh yes, we've got a contract waiting for you, it's just getting prepared' - but they just kept extending it basically - three months became four months, and then five months - they said, 'yep we're going to hire you at the start of January', and I was like okay - I've waited five months, one additional month - should be okay - but suddenly I got cut off, they just said, 'oh no, we don't know, you're not doing well, you haven't done the right thing' and then they dumped me.

How did it impact you at the time - turning up to work and not being paid?

Well I was just passionate about becoming a lawyer.

But when they got rid of me I was feeling disgusted, betrayed, depressed, you know just sad that this kind of thing happened. And it wasn't something that I expected - I thought things were going really well - they kept praising me on the job - 'you've done well' - so it was so unexpected.

How did you cope financially in that time?

I am still living with my parents - so that is how I was able to get by.

Part of the reason I kept asking about the payment because..

Once and for all I wanted to be independent of my parents you know, I didn't want to keep burdening them - that's why I was just so excited about the prospect of a job - and just went for it.

I thought if all I needed to do was stay six months and I can finally be independent from my family - that would have been great.

Why did you decide to pursue them for some payment?

At the end, they asked me for my bank details and we'll give you some money - and eventually they said 'come into the office' - and after waiting for an hour in the office - they gave me a cheque - they paid me \$500 - and they said, 'oh this is just a Christmas gift'.

What was your reaction to that?

Well I just said to him, 'this is not what I was expecting' - I said, 'how come you're treating me like this [REDACTED]?' - he was my boss and he said, 'oh I don't know, I don't know' -

He said it's not up to me - it's up to the other boss - and he told me that he doesn't make any decisions - which wasn't true - he was one of the directors.

Why did you pursue it?

I decided to pursue it because I felt betrayed - this is not how people should be treated.

If they had just told me after my three months of probationary period - it's not working out, we're not going to give you a job - because three months is a pretty long time - it would have been simpler - rather than baiting me for another three months, telling me I've done a great job, and then suddenly not hiring me.

They were just using you?

That's exactly how I felt - after they got rid me, I felt used and I felt like this isn't fair and it shouldn't happen to other people - so I thought I would take action.

Did you go to the Fair Work Ombudsman?

No I just went to you guys straight away.

You guys sorted it out really well for me.

How do you feel about having to spend money - to get the money you were entitled to?

It doesn't feel great -

In an ideal world, you would prefer not to pay - I mean..

The employer should be made to pay the costs of the worker - seeing they are the ones doing the wrong thing - they are the ones breaking the law - definitely - they should be the ones paying for it.

Do you support the idea of wage theft being made a criminal offence?

Yes I do - because it affects people's lives in a major way - I mean, even shoplifting is a criminal offence - if you steal \$5 worth of goods it's a criminal offence - yet when bosses steal wages - they can steal tens of thousands of dollars from people - and get away with it.

We're talking about people who are unable to pay their rent, or are unable to pay their bills - it's not fair.

Anything else you would like to say?

I just think in my case - they shouldn't lead you on to believe that you are doing well - and then fire you.

Did the Ombudsman do any checking or ask for records or anything like that?

No nothing really.

They said to me, 'no they believe that they don't owe you any money', so that was it.

They just said, 'no there's nothing further that we can do'.

I was out of work, I didn't have any money - I couldn't do much.

I went to legal aid - but they said we don't do industrial - if you want industrial - you are going to have to pay for it.

What did you think about that?

I was very pissed, understandably - by my calculations, I was owed up to \$40,000 - and yeah, they weren't interested in helping me.

I went and sought legal advice from a company called QPILCH - and they gave me advice, and they sent a letter of demand, but that was it.

Because I didn't have money to start legal action, they said, 'we consider this matter closed', and they couldn't help as well.

Did they do a request for records - did they ask your employer for your pay records?

No, they didn't ask my employers for anything. They told me about writing the letter of demand to get the money back, and I did that and nothing happened.

I gave them every pay slip I had - because these guys also failed to give me pay slips - they got to a point where they couldn't be bothered to do it - and instead of paying me my wages into a bank account, they were paying me cash, and then saying, well you're due to have a \$1000 as pay, we'll take out whatever you owe in taxes - and then gave me the rest as cash.

How long did that go on for?

Almost the whole time I was there.

How do you feel that you have to be out of pocket to pursue your employer?

It's a load of [REDACTED] really - I worked those hours - I busted my arse for that company, and I got screwed over in the end.

It turns out these guys own Dominos stores - they own Red Rooster stores - I met with one of the previous employees and he was telling me he was a manager for one of their hotels and they were ripping him off too.

It wasn't a case that these guys were in dire financial straits and couldn't afford to pay you?

No - they were just being greedy.

The other guys were only getting \$10 an hour - so that gives you an idea.

How does it make you feel that there is nowhere for someone like you to go to get help?

It makes me feel useless - I sort of gave up on it, because I eventually got work, casual work, and had enough money.

What am I supposed to do - it's a large sum of money, but I don't know what I'm supposed to do to get it.

Are you working now?

I just got made permanent part time in my job this year - so you know, things are going much better for me now - but still,

That was a lot of money - I could have used it to pay off a lot of things.

At the time that they let me go from that job - it was two months before I was getting married.

What impact did it have on you financially - the fact you weren't be paid what you should have been?

I was screwed basically - because I had to take out a loan to get married, none of the banks would help me - it wasn't that I had a bad credit history, it was because they couldn't see that I was getting regular wages paid into my bank account because I was being paid cash in hand.

I got a loan through GE money - but since I lost my job, that was it - I had to claim the loan insurance, the insurance kicked in, and then I arranged for hardship payments.

This is four years on, and I still owe \$3,000 for the same money - it was only \$6,500 when I took it out.

Do you think you should be out of pocket to chase the money that you are owed?

The way I see it - I don't mind if a firm goes into bat for me, and they win the case, and they say, 'look we got to take \$1000 or \$2000 out for fees', I'd go 'sweet, because you've done the job', but they're saying that I've got to come up with that amount of money first to get back whatever is already owed to me - it's unfair.

Do you think wage theft should be made a criminal offence?

It definitely should be made a criminal offence, because they're just stealing from people - and if you're making money in a business - you shouldn't be stealing from people.

Do you think it would help the problem?

I think it would make more employers would wake up to themselves, and think twice before they do what they are doing.

Now you are out of time to claim back all of the wages aren't you?

Yep, all I can try and claim is from 2012 to 2014 - but it's still about \$20,000.

Do you know where these employers are now?

No - I got no idea.

And the thing is - when they sold the servo in 2014 - the new owner sacked me over the phone - he told me he couldn't afford to keep paying me.

You put your heart and soul into the place and this is how they treat you?

Yeah, I'd been there for seven years, and anyone will tell you, I was the lifeblood of that servo - if it wasn't for me - it wouldn't have been that popular.

When I first started there, the old owners said to me, when you get good, you'll be able to service 64 customers an hour - well, within my first month, I did it four times.

They used to give us an incentive - if you had a zero variance in the till at the end of your shift - they would give me a 50 dollar bonus.

Well, I was getting so many of them that they turned around and said, 'okay we're not going to give you 50 dollars every time, we'll just give you 50 dollars in your pay for the month.'

I was basically the assistant manager of the place.

That boss was great - but when he told the servo - things started going downhill.

Can I ask you again about the Ombudsman - what did you think of your experience?

What am I paying taxes for, you know, I'm paying taxes which goes to pay government departments and employees like that, and yet I get nothing back in return - i didn't feel protected.

Now with my new job, I'm with a union, I'm in the SEA union - and I'm protected - and haven't had any troubles since then.

I work for David Jones.

The Ombudsman gave me all the correct pay rates, and when they went up and in what year, which allowed me to come up with a spreadsheet - so I could calculate how much I was paid, how much I should have been paid, and the differences and all that sort of thing.

One year it went up to \$17 an hour, and another year it went up to \$18 an hour, and from what I had from pay slips, I could show that I was working up to 70 hours a fortnight.

But you had to do all the work - all the calculations - why couldn't the Ombudsman take that evidence and go and chase it up for you?

That's what I would really like to know - it's not like I'm someone who has just got \$100 owing - and I've done everything I can possibly do myself, I don't have the skills to do anymore, so..

They weren't interested in helping you?

No, as I say to my friends - they just want to sit around and sing Kumbaya, and that's about it.

They said, we'll see if your employers want to sit down and have a mediation and sort things out - and of course, they said, 'no we don't want to do that' - and that was it. That's a load of [REDACTED]. It shouldn't be, 'no we don't want to', it should be a case of the Ombudsman turning around and saying, 'no, you have to', because a legal complaint has been made against you.

Did QPILCH made suggestions after the letter of demand?

I wrote in my letter, if it's not paid by a certain date, the next step will be legal action, and basically, because I had no money and being unemployed, I couldn't go any further - I couldn't do any legal action, and QPILCH said they could only do so much about it.

You needed money to chase the money you were owed?

They said I would need about \$1400 to get the ball rolling, and I didn't have that.

It's not fair on me that I have to let \$40,000 go - just because I didn't have \$1400.

I was broke - I was struggling - I needed that money.

I went on Centrelink after I lost my job - and that was fine for a couple of months, and I got married, and my wife and I filled out our paperwork for being a married couple - and me being on Centrelink - a 60 page document - they paid me a couple of times, and then they turned around and said, 'no, your wife earns too much money, and you're now declared a home owner because your wife owns a house'.

From July 2014 until I started at David Jones in May 2015, I had limited work - I worked at Australia Post for Christmas.

How tough was that 12 months when you were trying to find work?

It was very stressful. It put me in a dark place where I didn't want to be.

I even turned to my wife and I was in tears and I was so upset, and I said, I'm not sure if you still want to marry me.

We still went ahead with the marriage - they fired me in July - the wedding was a month later, we had already paid \$10,000 - we had no choice.

Appendix L

Phone Interview - Aiden Martin

14 July 2018

What was the name of the people you worked for?

It was [REDACTED].

When did you start working for them?

I started my six weeks of work experience with them in January 2017.

It was part of my Cert I in plumbing in TAFE.

They gave you a job?

Yeah they gave me an apprenticeship because they were happy with how hard I had worked.

When did you first realise that something wasn't right with your pay?

I noticed probably two weeks into working - um I googled my legal pay - the Fair Work calculator - and found out I was being underpaid.

I talked to the two tradespersons I worked with, cause they were trustworthy - and they told me it would be best to wait until my probation period was up before bringing it up with the bosses that I was being underpaid by a substantial amount.

So how long was the probation period?

It was three months.

What impact did the underpayments have on you financially?

My Nan was having to give me money to pay my phone bill, to put fuel in my ute, pay my insurance for my car - yeah, my Nan had to help with everything, and she's on the pension.

I had a little bit of debt that I got when I was 18, and I was still paying that off at the time too.

How did it make you feel knowing that he was ripping you off?

The fact that they were charging me out as a fully qualified tradesman, at \$90 an hour, and I was only seeing \$11 of that, and the fact that I was putting in the hard yards every day - it was pretty draining - it was hard to keep any form of positive relationship with those guys.

And they were charging you out to their customers at \$90 an hour? - Can they do that?

That's highly illegal but they did it anyway - they didn't care.

Do you think they cared about you?

[REDACTED] only cared about his cars, and you know all the money he was pouring into his cars.

[REDACTED] only cared about building the company at any cost. They didn't give a [REDACTED] - if they did they would have paid me correctly.

It gets to July - your probation is over - what do you do?

Well, about a week before I actually brought it up, I walked into the shed and [REDACTED] was like, 'how long you been working for us now?', and I said, 'ah, just over three months,' and he said, 'ah, well you must be finished your probation'. I asked if there was any paperwork to fill out and he said there wasn't, and said, 'you're one of the family now', those were his exact words - they've stayed in my mind ever since.

About a week after that, I asked them to sit down for a meeting, and during that meeting I told them that I wasn't being paid my correct legal award, and they said, 'look we'll go talk to [REDACTED]', which is [REDACTED] wife who is in charge of all the financials for the company.

They said, 'we'll go talk to [REDACTED] and come back with a figure for you', - and before [REDACTED] could finish saying that, I said, 'mate there's no figure to come to - I'm not asking for anything more and I'm not asking for anything less, I'm just asking for what I'm legally entitled to - what you have to pay me'.

And [REDACTED] said, 'is this the avenue you want to go down?' and I said, 'yeah it is', I said, 'I'm 21, that's what I'm supposed to be on - that's what I'm going to get'.

And he said, 'we'll have another meeting soon' - so I hassled them a few weeks after that, and they sat me down for another meeting, and that's when they sacked me.

What did they say when they sacked you?

I said, 'on what grounds am I being fired?' - and [REDACTED] said - because [REDACTED] was the person in charge of my apprenticeship - [REDACTED] said, 'it's the end of your probation, and unfortunately we're not going to keep you on'.

And I looked at [REDACTED], and I said, [REDACTED], didn't you tell me that my probation was over and I was part of the family?', and he said, 'yeah but we didn't sit you down and sign anything, and I said, 'mate, you told me there was nothing to be signed, we shook hands and that was it', and he said, 'nah mate, you've dropped the ball, you're always on your phone', which is a crock of [REDACTED] - I didn't drop the ball - I worked my arse off every day.

And the two tradesmen I worked with - they went in the next day to the two bosses and said you guys just made the worst decision of your life - one [REDACTED] is going to go to Fair Work and is going to get a lot of money out of this company and two - you lost a potential really good tradesman.

I wasn't asking for more money, I was just asking for what I was entitled to.

Did you go to Fair Work?

So the day they fired me, I drove down the road and pulled over, and I called Fair Work straight away - five minutes after being fired.

I gave them everything that had happened - they took it all down - and that was all I heard from them.

Did they say they would investigate?

No - I'm pretty sure they just took down everything - and that was it.

You came to Industrial Relations Claims - how long did it take for them to pay up?

I think it was six months from being fired.

What did you think about them taking so long to pay up?

Look, I knew at the end of the day - regardless of how long they wanted to put it off - I was determined to get that money.

Do you think it's fair or right that you have to spend money out of your pocket to recover that money?

I feel like the employer should have to pay for it because I was the one out of a job, and I had to go somewhere else to retrieve money that was stolen from me. And it cost me over \$2,000.

Do you think wage theft should be made a criminal offence?

A commercial plumbing company like the one I was working for, they're turning over \$20,000 plus - for a single job - and to take money from a young apprentice, like why shouldn't they be held accountable for stealing from the small man.

If I stole a \$1,000 milwaukee plumbing tool kit, I'd be getting in a world of [REDACTED], but they were taking my money - \$8,000 was stolen from me - that's a lot of money for me - and nothing happens to them. They rock on until they get the next apprentice and

do the same thing to him.

Do you fear that they will keep treating apprentice plumbers this way?

It wasn't so much [REDACTED] - it was [REDACTED] [REDACTED] is the most untrustworthy person I have ever met.

I know for a fact that if they get another apprentice, that this is what they'll be doing.

And they don't get any black mark against their name?

If someone wants to sign up as an apprentice to a company - a third party company that handles apprenticeships comes out and interviews them and signs all the paperwork..

I feel like there should be some sort of flag that comes up when an apprentice joins a company - and that flag says that this company has been done for underpaying an apprentice - and this is what happened for this apprentice to get his money back - like there should be a register or a flag that pops up - so it doesn't happen to another apprentice.

Is there anything else that you would like to see changed?

Honestly, when I got fired, I called up my apprenticeship place - and they said, 'ah mate, there's nothing we can do, call up Fair Work'.

I swear to God - these are the people...

I remember the first day that I signed up and signed my paperwork, the guy said to me, 'hey mate, I'm going to be the person who, if you ever have a problem with your apprenticeship, call me, you can call me whenever you want,' blah blah blah - the first time I [REDACTED] call him in my apprenticeship - and he's like, 'ah mate, we can't do anything for you - call Fair Work', it was just [REDACTED]

How would you describe the way you were treated by these guys?

The two bosses - it was absolutely appalling.

I put up with being paid that amount because I enjoyed the work, and I liked working with the two tradesmen I worked with, but it wasn't until I brought it up - and then they started treating me like [REDACTED] that I started to resent them.

With all the effort that I had to go to to retrieve my money and all the hard work I put into the apprenticeship, for it to be taken off me because they don't want to pay me an extra \$8 an hour - I felt like [REDACTED] - it was appalling.

How I felt for those few months - I wouldn't wish it upon anyone.

Appendix M

Phone interview - Leanne Andrews
15 July 2018

What did you do when you first noticed there was a problem?

We first went to management and they said they would look into it, and we spoke to the union rep, and she said she would look into it - and nothing ever came of it.

When they finally realised they had to do something about it - which was months later - they tried to change our shifts change our rosters to fix the problem - but they didn't do anything about the underpayments that had happened in the past.

They had no intention of fixing what happened in the past.

What did management say?

Our managers said things like, 'oh I'm new to the role', and 'this happened under past management', and 'not my responsibility', well actually - you're my manager - it is your responsibility.

It was just, 'I didn't know, I didn't know', well that doesn't cut as a manager - it's your job to know.

They didn't know the agreement - and as managers - it is their job to read the agreement and know what's in the agreement.

Why do you think it happened?

I think it was the incompetence of management for not knowing or understanding what their staff were entitled to.

What impact did this have on you personally?

At one point, after a phone call with Miles, I hyperventilated because of what was going on..

I nearly had a nervous breakdown over it all - because it was just so stressful with what the whole situation - I couldn't function.

I really loved my job there - and I didn't want to leave, but I would not work for that manager anymore.

I loved my job - I'd still be there if it wasn't for her.

And I cannot fathom how there has been no consequences on the business end of it - nobody has been punished for this monumental stuff up - we've been punished as employees, we've been dragged over the coals - but nothing was ever done about management.

How were you treated by management and co-workers while this was all going on?

There was lots of bullying and standover tactics - you know, people who never came to the department before - like I would never see my manager, and all of sudden we're getting twice daily visits, and you know, and upper management are all of a sudden turning up in the department.

We never had that before. It was intimidation.

How would you describe the way you were treated through the process?

We were treated very poorly and with a low regard for us as employees - and the disrespect was horrendous.

I'm 40 - I don't need to be treated like that. I'm good at my job.

How does it make you feel that this could be really widespread?

It's just disgusting that they have allowed it to go to this extent.

Do you think wage theft should be criminalised?

Where a manager fails to read or understand an EBA, there should be financial ramifications or career ramifications - not necessarily jail time.

They are still all in their jobs - I've left, other people have left - but those managers are all still there.

There is just no consequences for them at the end of the day. I'm sure they all got a bonus for screwing us over for as long as they could.

Appendix N

Phone interview - Kasey Cockburn

15 July 2018

When did you first notice that there might have been a problem with your pay?

About March we were asked to go over our agreement with a fine tooth comb - because we were told it was a fantastic agreement - and that's where we sort of picked up the fact that there was a little bit of an error!

What did you do next?

We went to our union rep - the hospital based union rep - and we asked her about it - and she said, 'oh I think you're right, I'll take that to the LCC meeting - the local consultative meeting - and even though I kept harassing her for a couple of months - she could never give me a straight answer, and didn't really do anything in the end.

Eventually I emailed the HR manager, and I never actually got a response from her.

Then we ended up having a meeting with our Admin Manager and her boss - to say, you know, we've been notified that there has been a problem with your rosters so we want to look at that, but they weren't really interested in going back to see how they could fix what had happened in the past.

They didn't want to fix the mistakes from the past.

When we said, 'well what are you going to do about what has happened?', they both sort of looked at each other and went, 'oh, we'll talk to the HR lady about that', well she was supposed to be at the meeting, but was somehow too busy to attend.

We tried to schedule a couple of other meetings with her and she was always too busy.

What was your role there?

We worked in admin in emergency.

I was the longest serving member of the reception team - I'd been there for 12 years.

How were you underpaid?

The agreement said anytime worked after six hours we were supposed to get time and a half - until such time as the shift finished, or we got a break - well of course we never got a break - so for the last two hours of every shift, we were entitled to time and a half.

In the end we just ended up settling - just so it would go away really - I mean, it was just too hard.

Did you get the full amount that you were owed?

Well, I was happy with what I got because it meant that it was finished - and to me, that was them admitting that they were wrong, so that was payment enough.

Do you think that it's fair that workers have to fork out money to pursue unpaid wages?

Look, probably not - but at the end of the day - if you want something done properly, you've got to pay for that service.

It shouldn't happen in the first place - the employer should know what their agreement is - considering they are the ones who negotiated it.

It shouldn't happen in the first place but I don't begrudge paying for it - it got us the result and we were happy with that.

What impact did it have on you personally?

It was very stressful for all of us. We didn't know what was going to happen next - our rosters were being changed, we had a new admin manager at the time - there was a lack of communication at work.

All six of us just found it incredibly stressful - and hence the reason why we've all left basically.

It sounds like it could have affected hundreds of workers - how does that make you feel?

I just feel frustrated for everyone - because you show up - and you do what you can for this company, and they don't have the decency to pay you correctly, and when you question it, you get treated like you're the criminal and you've done something wrong.

I just think it's not right - and I know all six of us felt like that - just a bit of a kick in the guts when we bent over backward for the place - we pulled double shifts and went above and beyond re-arranging our personal lives to make sure the roster was covered - and we got no thanks.

And when I resigned, after twelve years, they said nothing - no thanks for your service.

(known as trouble makers)

The minute you speak up and say you're not being paid right - all of a sudden everybody knows your name - and all for the wrong reasons - we became the target of gossip in the corridors - it wasn't very nice.

Could you have done this on your own?

We didn't have the knowledge of the agreements and the pay rates - it was certainly the first time I'd picked up my agreement and read it closely - so we certainly were grateful to be guided by Miles and his team - because they knew what they were doing.

Do you think wage theft should be a criminal offence - even if your case may have been an administrative error?

Oh I don't think so

I think payroll are a bunch of gumbies.

I think it's just incompetence - you would think that sometime in the past 20 years, someone didn't look at these pays - and go - gee these girls work eight hours, I wonder why they don't get a break?

People knew we worked eight hours straight without a break - I mean, they knew. They know we're a 24 hour department - I mean, what did they think.

All six of us find it very hard to fathom that nobody knew - maybe they are as silly as this situation turned out to be - but we find it hard to believe that nobody knew.

Would you like to see wage theft made a criminal offence?

Well, it probably makes sense doesn't it - if anyone steals from anyone else, they get put before a court.

Like if I went to my neighbours and stole something, or if I went to Coles or Woolies and took my groceries without paying - I'd be in the poo wouldn't I? - so I don't know why they should be any different.