



**A•S•U**  
Australian Services Union

## ASU Submission

### Unlawful underpayment of employees' remuneration

Senate Standing Committees on Economics

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## 1. Introduction

The Australian Services Union (ASU) is one of Australia's largest unions, representing approximately 135,000 members.

The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union, the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

Currently ASU members work in a wide variety of industries and occupations because the Union's rules traditionally and primarily cover workers in the following industries and occupations:

- Social and community services
- Disability support
- Local government
- State government
- Transport, including passenger air and rail transport, road, rail and air freight transport
- Clerical and administrative employees in commerce and industry generally
- Call centres
- Electricity generation, transmission and distribution
- Water industry
- Higher education (Queensland and South Australia)

The ASU has members in every State and Territory of Australia, as well as in most regional centres.

## 2. Our Submission

The ASU welcomes the opportunity to provide this submission to the Senate Standing Committee on Economics and the inquiry into the causes, extent and effects of unlawful non-payment or underpayment of employees' remuneration by employers and measures that can be taken to address the issue.

Many of Australia's most trusted brands and organisations have been in the headlines for all of the wrong reasons of late, due to employee underpayments. 'Wage theft' as these incidents have become known, seems to have become an accepted fact of life, with many workers resigned to the fact that underpayment is unavoidable.

Wage theft refers to the non-payment or underpayment of the full wages to which employees are legally entitled. This can take a variety of forms including, but not limited to: underpaying wages, superannuation, breaks, overtime, leave entitlements, higher duties, shift allowances, unreasonable deductions, sham contracting and the misuse of ABNs etc.

According to a report released by PwC in November 2019, Australian workers are underpaid by some \$1.35 billion each year.<sup>1</sup> Wage theft can have a significant impact on workers through financial hardship and can result in an unfair competitive disadvantage for employers who correctly pay their staff.

In our experience the actual reported underpayments made by big business are very different to the final audit of underpayments. For example, originally George Calombaris reported underpaying staff \$2.6 million in 2017 however this figure inflated to \$7.8 million in 2019 – that is a difference of \$5.2 million!

The ASU is confident that this inquiry will receive many well researched submissions which will contain specific statistics relating to the scale and extent of wage theft across Australia. Our submission will focus on real-life examples of employee underpayments from ASU Branches and members throughout Australia.

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<sup>1</sup> The Saturday Paper, *Underpaid workers and wage theft*. Available at: <https://www.thesaturdaypaper.com.au/opinion/topic/2019/12/07/underpaid-workers-and-wage-theft/15756372009192>

### 3. Recent examples of underpayments

The ASU and its Branches have been involved in many underpayment claims over the years. Below is a summary of several examples of wage theft our members have experienced recently. We are happy to share more in-depth details with the Committee should this be desired.

*Recent examples of wage theft include:*

#### **Qantas**

In early 2019 Qantas admitted that it had wrongly employed about 220 workers on individual contracts rather than under the relevant enterprise agreement. This resulted in around 55 workers, mostly in its digital marketing and analytics team - being underpaid by an average of \$8000 a year over several years.<sup>2</sup>

#### **NSW & ACT Branch**

During 2019 our NSW/ACT Branch was able to recover \$3 million in stolen wages and entitlements for their members. This was on top of the \$4.4 million recovered in 2017.

#### **Red Cross**

In 2017 Australian Red Cross discovered it had been underpaying approximately 800 of its employees over a number of years. This was primarily due to applying the wrong award or Enterprise Agreement to some roles, the incorrect award or Enterprise Agreement classifications to other roles or not applying any award or Enterprise Agreement where a role was covered. The average individual impact was around \$1,800 per annum over a period of several years, with Australian Red Cross reporting a liability of \$21 million due to the underpayments.<sup>3</sup>

#### **Unnamed Organisation (Community Services – SA)**

One of our members at our SA/NT Branch in community services was employed to work 30 hours a week, but wasn't being given their hours. Despite requesting more work, the hours weren't forthcoming. This meant that our member wasn't being paid at the amount in their contract, just in the hours they were working. Our member won back \$22,000 in unpaid wages from their employer.

#### **Western Power**

In 2019 our WA Branch won compensation for hundreds of Western Power employees after they were underpaid for a period of 10 years. The error was identified in relation to the application of the 'better off overall' test of Individual Agreements (IAs) and Flexible Agreements (FAs) when compared with the ASU & Western Power Enterprise Agreement.

#### **Neami**

In 2019 the ASU alerted Neami that several employees were being paid less than the minimum rates in the Modern Award. This was because Neami had continued to pay staff the rates set out in the 2015 Agreement, which fell below the Equal Remuneration Order rates that applied to the modern award rates from 1 December 2018. Neami confirmed these underpayments and has subsequently back paid employees.

#### **Victorian & Tasmanian Authorities & Services Branch**

During 2019 our VIC/TAS Branch was able to recover \$11,035 in stolen wages and entitlements for their members.

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<sup>2</sup> The Sydney Morning Herald, *Qantas to pay out thousands to staff after 'embarrassing' bungle*. Available at: <https://www.smh.com.au/business/workplace/qantas-to-pay-out-thousands-to-staff-after-embarrassing-bungle-20190208-p50wge.html>

<sup>3</sup> Australian Red Cross, *Our Financials 2018/2019*. Available at: <https://www.redcross.org.au/getmedia/b3aed5bd-8158-40bc-b69d-0c07a99b5b97/Australian-Red-Cross-Financials-2019-V6.pdf.aspx>

### ***Flight Centre***

In 2019 our QLD Together Branch took court action against Flight Centre regarding the underpayment of five employees over a six year period totalling approximately \$250,000 where it failed to pay minimum wages, penalty and overtime rates, annual leave and leave loading at the correct rate. This case is still ongoing.

### ***Unnamed Organisation (Community Services – SA)***

Recently an ASU member, who was working as a casual, contacted the SA/NT Branch for support when her long term (former) employer tried to get out of paying out her long service leave. In South Australia the *Long Service Leave Act* allows casuals to accrue their entitlements (just like full-time workers). Our member won \$15,000 in unpaid long service leave.

### ***Community Connection***

This month our QLD Branch has been involved in a dispute with Community Connections who have classified workers as “home care workers” instead of “community support workers” resulting in an almost \$5 an hour difference for workers.

### ***Qantas***

In late 2018 Qantas called on its employees to volunteer to work for free over the Christmas and New Year period. “We’re trialling a new volunteer program for ... people who’d like to lend a hand to the frontline during December and January.... If you volunteer outside of normal/rostered working hours, then the shift will be voluntary and unpaid.” the memo read. Due to a barrage of criticism from workers and unions, with the airline accused of committing “Christmas wage theft” and CEO Alan Joyce labelled a “Christmas grinch”, Qantas abandoned its plans to ask its head office staff to work for free in its Sydney terminal.

### ***Queensland Services Branch***

During 2019 our Queensland Services Branch was able to recover \$59,718 in stolen wages and entitlements for their members. In the period 2018 to 2019 they recovered \$1,026,309 for our members.

### ***Graduate lawyers***

Early this year top law firms were reviewing possible underpayments of their graduate lawyers, with several confirming underpayments due to graduates working excessive work hours that left them being paid below the minimum wage. One young lawyer said he made more money bartending than he did in his first law job, which paid him \$600 a week for seven days a week work, 16 hours a day<sup>4</sup>. Ashurst, the law firm advising Woolworths on their \$300million wage theft scandal recently admitted it has been underpaying their own staff, with graduate lawyers being underpaid by as much as \$15,000 each. So the law firm advising one company on its wage theft case has also been engaging in its own wage theft.

### ***Community Living Association***

In 2019 our WA Branch settled a long running underpayment dispute of 47 current and former disability workers. The exact amount of the settlement is confidential but we believe it is one of the largest for underpaid wages in WA.

### ***Unnamed Organisation (SA)***

An ASU member was being paid in gift cards instead of wages. Knowing this wasn’t right, the member got in touch with our SA/NT Branch and with the help of our industrial officer, not only won back \$1300 in stolen wages but won an extra \$700 payment as compensation.

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<sup>4</sup> AFR Online, *Allens, Minters review underpayment*, 21 January 2020

## **Community Services Sector – ASU Queensland Services Branch**

The following example was submitted by our Queensland Services Branch to the *Inquiry into wage theft in Queensland* in 2018.<sup>5</sup>

Employees working in the community services sector are low paid workers who provide direct support to members of the community. Employees working in this sector are predominantly female employees who are Award reliant. The *Social, Community, Housing and Disability Services Industry Award 2010* (“SCHADS Award”) is the relevant industrial instrument.

A significant number of the complaints that our Union has received, relate to the misapplication of the SCHADS Award. Of particular note are the Sleepover Allowance, Weekend Penalties, Travel Allowances and the classification of the role.

With the transition to NDIS, more and more community sector services have downgraded the classification of roles despite the very clear descriptors contained within the SCHADS Award. This is to ensure compliance with funding requirements. The NDIS only funds to a level 2.3 of the SCHADS Award whereas previously employees may have been paid at a level 3 or 4 of the Award. There is concern that we will see more downgrading of positions if there is not a review of the funding arrangements.

### **Example One**

Our Union pursued an underpayment claim that extended from 2012 to 2017 for three employees who were employed by a medium sized community sector organization. The organisation is a residential care facility to children who require care. It is effectively a last resort for children who can't be placed elsewhere.

The organisation receives funding from the Department of Communities, Child Safety and Disability Services and is required to apply for funding on a child by child basis, effectively through a tendering process.

The claim is a consequence of our members being required to work up to 72 continuous hours. Underpayments have also arisen because the employer did not correctly pay for overtime, or for Saturday, Sunday and public holiday work, sleep disturbances and travel. This is despite our members repeatedly raising concerns with the employer about wages and the amounts that were being paid.

The claim was more than \$150,000.

### **Example Two**

Our Union investigated a potential underpayment claim for employees at a large community sector organisation. The organisation has an Enterprise Agreement which includes an undertaking that ensures employees will not be worse off than if the SCHADS Award applied. Initial investigations indicate that employees are significantly worse off than if they had been employed under the SCHADS Award.

Provisions of the Enterprise Agreement that are inferior to the SCHADS Award include –

- 1.Hourly rate of pay
- 2.Sleepover Allowance
- 3.Shift Penalties
- 4.Weekend Rates
- 5.Overtime/TOIL

An estimate for one employee over a six-year period was in the vicinity of \$200,000.

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<sup>5</sup> The Services Union, *Inquiry into wage theft in Queensland, Submissions of the Services Union*. Available at: <https://www.parliament.qld.gov.au/documents/committees/EESBC/2018/Wagetheft/submissions/046.pdf>

## Community Services Sector – ASU SA/NT Branch

The following example was submitted by our SA/NT Branch to the *Inquiry into wage theft in South Australia* in 2019.<sup>6</sup>

One of the ASU industries where wage theft appears most prevalent is in the social and community sector, including NDIS providers. A key example of wage theft in the community sector is workers not receiving their entitlements around meal breaks.

### **What does the award say?**

#### *27.1 Meal breaks*

- (a) Each employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes duration, to be taken at a mutually agreed time after commencing work.
- (b) Where an employee is required to work during a meal break and continuously thereafter, they will be paid overtime for all time worked until the meal break is taken.
- (c) Where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program, they will be paid for the duration of the meal period at the ordinary rate of pay, and clause 27.1(a) does not apply. This paid meal period is to be counted as time worked.<sup>7</sup>

Workers in the social and community services sector are frequently working through meal breaks and are not being paid for it. Many ASU members report feeling unable to take a proper break or leave their work premises because of lack of support and an obligation to continue to support clients through break times. The ASU is currently involved in disputes regarding meal breaks to ensure workers are paid what they are owed.

Another entitlement workers in the sector are frequently not being paid correctly for is during sleep over shifts. Many services operate 24 hours a day with some clients requiring 24-hour care. Under the Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS award) workers are entitled to:

#### *25.7 Sleepovers*

- (a) A sleepover means when an employer requires an employee to sleep overnight at premises where the client for whom the employee is responsible is located (including respite care) and is not a 24 hour care shift pursuant to clause 25.8 or an excursion pursuant to clause 25.9.
- (b) The provisions of 25.5 apply for a sleepover. An employee may refuse a sleepover in the circumstances contemplated in 25.5(d)(i) but only with reasonable cause.
- (c) The span for a sleepover will be a continuous period of eight hours. Employees will be provided with a separate room with a bed, use of appropriate facilities (including staff facilities where these exist) and free board and lodging for each night when the employee sleeps over.
- (d) The employee will be entitled to a sleepover allowance of 4.9% of the standard rate for each night on which they sleep over.
- (e) In the event of the employee on sleepover being required to perform work during the sleepover period, the employee will be paid for the time worked at the prescribed overtime rate with a minimum payment as for one hour worked. Where such work exceeds one hour, payment will be made at the prescribed overtime rate for the duration of the work.

<sup>6</sup> Australian Services Union SA/NT Branch, *Inquiry into wage theft in South Australia, Submissions of the SA/NT Branch*. Available at: <https://www.parliament.sa.gov.au/Committees/Committees-Detail>

<sup>7</sup> Social, Community, Home Care and Disability Services Industry Award 2010

(f) An employer may roster an employee to perform work immediately before and/or immediately after the sleepover period, but must roster the employee or pay the employee for at least four hours' work for at least one of these periods of work. The payment prescribed by 25.7(d) will be in addition to the minimum payment prescribed by this subclause.

(g) The dispute resolution procedure in clause 9 of this Award applies to the sleepover provisions.<sup>8</sup>

Employers often argue that an employee was not 'required to work' while on a sleepover shift to avoid paying entitlements for work during the night. If a worker is woken to offer support, make security checks or perform other tasks they are being required to work and employers who fail to pay at the correct rate for this work are undertaking wage theft.

Funding uncertainty arising in the transition to the NDIS also results in structural pressure for organisations to under classify their workforce. Recently, Anglicare SA made a number of workers redundant in their exceptional needs unit while offering jobs back at a lower rate of pay. Workers were previously paid at level 4 of the SCHADS award but were offered jobs back at level 2 while working with the same exceptional needs clients. The NDIS pricing model needs to be restructured so that prices reflect the correct wages required to pay highly skilled and qualified workers to work with people with exceptional needs.

We ask the Committee to refer to a 2018 study titled "*Wage theft, underpayment and unpaid work in marketised social care*"<sup>9</sup> which found disability support work organised under the NDIS is leaving employees underpaid for significant amounts of their working time.

This study also analysed how the funding and regulatory environment helped facilitate the systemic non-payment of working time for care workers, including non-payment for travel time and overtime.

## 4. Recent examples of sham contracting and labour hire

Sham contracting is when your employer classifies you as an "independent contractor" instead of an employee. Sham contracting arrangements not only undermine employment standards but are an attempt to deny workers the protection provided by labour laws and institutions like the Fair Work Commission and trade unions.

In our experience, workers engaged as independent contractors will often 'accept' a wage that is under the legal minimum for their industry. This is largely due to the insecure nature of their employment and the weak bargaining position they are placed to ask for a decent wage.<sup>10</sup>

### *The Call Centre Sector –Sham Contracting*

For over three decades the ASU has campaigned for the workplace rights and safety of workers in the call centre sector. The call centre sector is a significant user of casual labour, labour hire, temporary contracts and independent contractors.

In our view, so called "independent contractor" arrangements in call centres are sham contracting arrangements dressed up as flexibility.

Our union has spoken to home based call centre operators who are engaged as independent contractors and who work on campaigns for some of Australia's best known companies.

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<sup>8</sup> Ibid.

<sup>9</sup> Macdonald, F, Bentham, E and Malone J (2018) *Wage theft, underpayment and unpaid work in marketised social care*. The Economic and Labour Relations Review Vol 29(1): 80–96. Available at:

<https://www.parliament.qld.gov.au/documents/committees/EESBC/2018/Wagetheft/submissions/046.pdf>

<sup>10</sup> Australian Council of Trade Unions, *The Shadow Economy, ACTU Submission to the Black Economy Taskforce*. Available at: <https://www.actu.org.au/media/1033397/the-shadow-economy-submission.pdf>

This is what they have told us:

- Operators are paid as little as \$1.98 per call. There is no protection for the operators as to how long a call can go on for.
- If the operators do not meet the 'Quality Assurance' and 'Adherence' targets the call rate is halved not just for that call, but for all of the calls that week.
- Operators are not allowed a transcript of their call or to ask why they failed when they fail the above targets.
- Operators pay for their own costs including superannuation and insurance.
- Operators are located across regional & metro areas.
- Operators log onto to a portal every week to nominate the shifts they are available for. Drawing up the roster can take up to 3 hours and none of the operators are paid for their time doing this.
- We are advised that if an Operator cannot do a shift they must provide a Doctor's certificate – hardly consistent with an independent contractor arrangement.
- Operators must re-sign a contract on the portal every couple of weeks – presumably to give the appearance that they are genuine contractors as opposed to employees.

At the time the ASU formed the view that the arrangements were not a legitimate independent contractor arrangement. For a range of reasons the case was not tested in the courts.

Of the home based call centre workers the ASU has had contact with all of them have reported a fear about making a complaint. Overwhelmingly they felt that they would lose the income and ability to work from home if they sought to pursue any action.

In November 2011 the Fair Work Ombudsman released a report into sham contracting in the cleaning, hair and beauty and call centre industries.<sup>11</sup>

The audit of 102 businesses was conducted in April and May of 2011. Of the call centres audited (that number is unclear from the report) 7 instances of sham contracting were identified and 14 instances of 'misclassification of employees as independent contractors were discovered. Given the 102 businesses were across cleaning, hair & beauty AND call centres these are alarming statistics from a fairly small sample of employers.<sup>12</sup>

The ASU believes that this report represents the tip of the iceberg in respect to sham contracting in the sector. Home based call centre workers are isolated and out of sight. Regulation and compliance for home based workers in a range of industries is an area that requires different resources and approaches from regulators if exploitation is to be uncovered and remedied.

We must not let the attraction of the flexibility associated with home based work mask exploitation of vulnerable and isolated workers. One of the barriers to effectively stopping instances of sham contracting is the factors used to determine the difference between an employee and an independent contractor are not always clear cut.

Even if the common indicators point to a person being an employee the cost of legal action can be beyond the reach of many vulnerable workers. A strengthening of the laws prohibiting sham contracting is required at the federal level, as well as ensuring that remedies to sham contracting are affordable and accessible to workers and their unions.

## The Aviation Services Sector – Labour hire

The ASU has significant membership and a long history of campaigning for the rights and industrial interests of ground staff across the aviation sector.

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<sup>11</sup> Fair Work Ombudsman, *Sham Contracting and Misclassification of Workers in the Cleaning Services, Hair & Beauty and Call Centre Industries – November 2011*. Available at: <https://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/november-2011/20111111-sham-contracting-report>

<sup>12</sup> Ibid.

In 2013 a new entrant in the aviation services sector, providing 'special needs' passengers with assistance on a contractual basis with certain ground handling companies in the sector, set up on the eastern seaboard, i.e. a labour hire relationship.

A labour hire relationship is characterised by a worker who is engaged by a labour hire agency (agency) and assigned to work for an organisation (host employer). This means that the worker is not employed directly by the place where they work.

The ASU has chosen not to name this company, the host company or any of the impacted employees in this submission for privacy considerations.

In Melbourne the ASU Victorian Private Sector Branch became involved when workers employed by the new entrant became aware that they were being paid significantly lower rates of pay and conditions compared with those workers directly employed by the host company, this is a form of wage theft.

The ASU had significant concerns about the wages and conditions that employees of the new entrant had been engaged under. The ASU also had concerns regarding the impact that lower industry terms and conditions would have across the sector.

These workers joined the ASU and the union started work on pursuing their rights.

Despite being shift workers, employees were receiving:

- A flat rate of \$16 per hour – no penalty rates for shifts that would normally attract penalty
- rates in the industry;
- No public holiday rates of pay;
- Employees were required to pay for their own uniforms;
- Employees were required to pay for their own Aviation Security Identification Card.

In the course of representing our members concerns with regard to their employment arrangements, the company claimed that they have been issued with a 'ruling' from the Fair Work Ombudsman that the work performed by their employees was outside of any existing Modern Award. As a result the employees were being treated as 'award free' by their employer.

It later became apparent that the Fair Work Ombudsman had given no such 'ruling' and the employer was relying on a phone call made to the Fair Work Ombudsman information line where very little information was provided by the employer about the nature of the work being undertaken.

As was later confirmed by the Fair Work Ombudsman, employees were performing duties covered by the scope of an existing Modern Award - the Airline Operations – Ground Staff Award 2010.

The company went into liquidation less than six months into operation owing approximately 17 employees in Victoria over \$34,000 in lost wages and unspecified amounts of accrued leave and unpaid Superannuation contributions.

No assets were realised through the liquidation so former employees were forced to make application through the Fair Entitlements Guarantee (FEG) for lost wages and entitlements. Ultimately the workers were left out of pocket and most were left unemployed.

## 5. Payroll

Recently, a large number of underpayment cases pinning the blame on payroll issues have made media headlines.<sup>13</sup> In our experience many businesses have experienced long standing payroll problems mainly due to an underinvestment in payroll systems and the undervaluation and underestimation of the skills required of workers who manage payroll systems.

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<sup>13</sup> <https://www.theage.com.au/business/companies/software-the-root-cause-of-underpayment-and-overpayments-top-retail-ceos-say-20200220-p542se.html>

Over several years we have witnessed businesses outsource and offshore their payroll. For example Jetstar once offshored payroll and was so plagued with problems such as underpayment of staff, incorrect calculation of pay and leave, and incorrectly issued group certificates that it decided to bring the payroll work back onshore. Despite the work coming back onshore, mistakes continued to incur due to the loss of experienced payroll staff that were made redundant during the offshoring process.

Businesses often undervalue the record keeping that is required, i.e. actual hours worked, changes to award and national minimum pay rates, penalty rates, overtime or weekend hours, annualised salary arrangements etc.

In addition payroll still suffers the stigma of being a back-office, low-profile function of HR – affecting engagement and attrition levels of payroll staff. It is also a predominately female position with approximately 86% of workers being female.<sup>14</sup> Over the years we have seen a culture by business to reduce the number of employees in back-office positions, including payroll.

We believe it is essential that payroll staff be properly paid, properly trained and supported, with a minimum qualification in payroll administration essential. As we have witnessed with many wage theft cases one small error replicated every pay cycle for thousands of employees over several years adds up to a large amount.

It is time for business to stop the 'set and forget' mentality of payroll and to invest in payroll systems, including adequate investment in the training of payroll staff, along with consulting with payroll staff in regards to selecting any new payroll system that is to be implemented.

## 6. Difficulty with recovery

The options to pursue an underpayment claim are difficult to navigate, onerous, time consuming and costly for individuals. Quite often this is a deterrent for individuals to pursue underpayments.

The Queensland wage theft parliamentary inquiry "heard that affected workers feel powerless to reclaim their lost wages and entitlements, and have been largely left alone to do so by an under resourced federal regulatory system".<sup>15</sup>

Reasons why workers do not try and recover unpaid wages include: not knowing how to go about recovering wages, fear of job loss, fear of immigration consequences, pessimism about the outcome and the perception that the amount of unpaid wages was not "significant" enough.<sup>16</sup>

A further factor which assists to perpetuate wage theft is the lack of awareness from workers about their correct wage and entitlements. If workers are unaware of their entitlements, they are unable to enforce their rights and hold their employer accountable.

Furthermore, the Fair Work Act places unnecessary restrictions on unions from conducting workplace checks on businesses suspected of underpaying and exploiting workers. This means that unions are largely reliant on members to make a formal wage or super theft complaint before an application is lodged.

The Queensland wage theft parliamentary inquiry Committee recognised the critical role unions play and the concerns raised by unions in regard to worker access to representation in the workplace. They stated "Evidence provided by workers highlighted the importance of union support to enable them to successfully recover wages and entitlements. They were able to engage directly with their employer, and where relevant, be represented in negotiations and obtain entitlements without fear of reprisal."<sup>17</sup>

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<sup>14</sup> <https://joboutlook.gov.au/Occupation?search=Career&code=5513>

<sup>15</sup> Queensland Parliament, A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland. Available at: <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1921.pdf>

<sup>16</sup> Farbenblum, B and Berg, L (2019) *Wage theft in silence: Why migrant workers do not recover their unpaid wages in Australia*. UNSW Law Research Paper No. 19-1. Available at: <http://www.austlii.edu.au/au/journals/UNSWLRS/2019/1.html>

<sup>17</sup> Queensland Parliament, A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland. Available at: <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1921.pdf>

We ask this inquiry to consider measures to improve worker access to representation, including union access to workplaces suspected of underpayments, to ensure compliance with industrial instruments and to investigate contraventions.<sup>18</sup>

## 7. Measures to address wage theft

The ASU would like the government to examine the levels of resourcing required to address the scale of systematic and deliberate underpayment of wages and entitlements. Without allocating significant additional resources to enforcing laws, we won't catch more non-compliant businesses nor encourage them to comply, which will render any new laws coming out of this inquiry as hollow.

Compliance and enforcement laws to recover stolen wages should be made easier and more effective. This could be achieved by the introduction of a Wage Recovery process that is easy to navigate, cost effective and ensures a timely resolution of the claim. The onus of proof should heavily reside with an employer and stronger penalties should be applied to employers who fail to keep and provide accurate records.

In addition the establishment of an appropriately funded Agency that can receive complaints, undertake investigations and take legal action where necessary to deal with underpayments would be a significant improvement on the current system and would assist in the eradication of wage theft in Australia. This may further assist in reducing the resolution time for underpayment claims and provide a system that is designed to assist employees who have been disadvantaged as a result of employer wrongdoing.

In terms of sham contracting, the ASU fears that the trend towards bogus or sham contracting will continue unless the Government reforms our workplace laws.<sup>19</sup> A strengthening of the laws prohibiting sham contracting are required at the federal level, as well as ensuring that remedies to sham contracting are affordable and accessible to workers and their unions.

Furthermore, there must be changes to the laws to prevent employers from outsourcing their labour requirements to labour hire companies or contractors in order to cut the wages of employees and side step the enterprise agreements for the pay and conditions of those employees.<sup>20</sup>

The ASU believes this Committee should consider the variety of models and approaches for criminalising wage theft that are submitted to this inquiry and consult further with stakeholders in regard to a preferred model(s).

Finally, the ASU supports the Australian Council of Trade Union's submission to this inquiry.

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<sup>18</sup> Australian Council of Trade Unions, *Wage theft: The exploitation of workers is widespread and has become a business model*. Available at: <https://www.actu.org.au/media/1385221/d170-wage-theft-in-australia-the-exploitation-of-workers-is-widespread-and-has-become-a-business-model-actu-submission-15-august-2018.pdf>

<sup>19</sup> Australian Council of Trade Unions, *Wage theft: The exploitation of workers is widespread and has become a business model*. Available at: <https://www.actu.org.au/media/1385221/d170-wage-theft-in-australia-the-exploitation-of-workers-is-widespread-and-has-become-a-business-model-actu-submission-15-august-2018.pdf>

<sup>20</sup> Ibid