

5 September 2017

Attention: Deputy Chair and Member of Currumbin
Education, Employment and Small Business Committee
Parliament House
George Street
Brisbane Qld 4000

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

Maurice Blackburn
ABN 21 105 657 949
Level 8
179 North Quay
Brisbane QLD 4000
PO Box 13247
George Street, 4003
DX 1060
T (07) 3016 0300
F (07) 3236 1966

Dear Madam,

We refer to the questions on notice following the public hearing for the Education and Small Business Committee's Inquiry into wage theft in Queensland.

We are pleased to share with you our extensive research on the issue of wage theft, including a compilation of resources which will help quantify the extent of wage theft in Australia. We are of the view that understanding the degree and nature of wage theft in Australia will drive evidence based policies, support services (especially for educational institutions to assist international students) and provide the impetus for legislative change.

To this end, we would welcome the opportunity to further assist with the Committee's important work.

1. Introduction

- 1.1 The current legislative framework is deficient in detecting and deterring acts of wage theft by employers. Understanding the nature and extent of wage theft is therefore important in agitating for legislative change.
- 1.2 Unfortunately, quantifying wage theft is challenging as it has ripple effects which impact the health of families, businesses, communities, and the wider economy.
- 1.3 There is currently no national database on the extent of wage theft in Australia partly due to the many forms of wage theft and partly due its far-reaching consequences. The Fair Work Ombudsman's website and other research papers prepared by various groups/bodies/Universities have attempted to estimate the possible extent of wage theft.
- 1.4 Whilst this research/data may be useful, it may have limited utility due to nuances in the way the research/audits have been conducted, the way the data has been collected, the categorisation of subjects and the interpretation of the collected data.
- 1.5 Further, it has been suggested that wage theft is grossly underestimated as many workers (especially temporary migrants) fail to report unpaid, penalty rates, superannuation and Workers Compensation insurance premiums.
- 1.6 Key findings of the research/data reviewed in this paper confirm that wage theft is endemic across Australian and there is a need for action to ensure greater compliance with Australian labor laws.

2. Need for a National Database

- 2.1 It is important to understand the breadth and depth of non-compliance with labour laws in Australia, to enable the development of evidence-based policies, support services (especially for educational institutions regarding their international students) and legislative schemes.
- 2.2 This paper seeks, in so far as possible, to provide resources and evidence which help quantify the prevalence of wage theft in Australia and in particular wage theft, categorised by industry and state or region.

3. No National Database

- 3.1 There is inadequate empirical data on the overall nature and extent of wage exploitation in Australia. Whilst there is some quantitative data on the subject matter, there is no central depository where this information is stored.

4. Limitations of Data Available

- 4.1 The available data on the issue of wage theft may have limited utility, particularly in the application of a national analysis, primarily because:
- (a) The research being carried out is conducted by various groups/bodies/universities who have study specific nuances in their data collection, their categorisation of subjects and their interpretation of data collected.
 - (b) Importantly, some groups/bodies/universities may take the expression 'wage theft' to mean 'hourly wage' as distinct from other entitlements, including; superannuation, overtime, annual leave or any non-payment of legislative or contractual entitlements (which provide a quantifiable value) which are important to the discussion of wage theft.
 - (c) Some of the research or studies have been applied to a small class of participants. Accordingly, the value of the data or hypothesis from the research or studies may be inaccurate. Studies, especially those with a small number of subjects confine research to particular issues. For example the National Temporary Migrant Work survey, which is discussed below, carried out an analysis on the lowest paid jobs of migrant workers. This limited the utility of the research as it did not capture participants other experiences which might have been more positive.

5. Limitations in Quantifying Wage Theft

- 5.1 Unfortunately, no research or database will ever be able to truly capture the impact of wage theft for a number of reasons, namely:
- (a) Wage theft has ripple effects which impact the health of families, businesses, communities, and the wider economy which cannot be easily quantifiable.
 - (b) Wage theft often goes unreported or undetected. For example, the National Temporary Migrant Work survey provided that international students and backpackers were aware of the Australian minimum wage and knew they were being underpaid, but believed that few people on a visa could expect to receive minimum wage. This implies that some victims of wage theft omit

to report it. Migrants are deterred from making complaints especially if they are working outside their visa restrictions as this can affect their ability to remain in the country. For example:

- (i) Working on a travelling visa can limit them working a maximum period of 6 months with any one employer.
 - (ii) International students are restricted to working a maximum of 20 hours a week and sub class 457 visa workers are restricted from working in a particular job or industry not included in their visa.
 - (iii) Temporary visitors may be issued with a visa type that does not provide them with work rights or they may have overstayed their original visa.
- (c) Migrants who contravene their visa are in serious contravention of migration laws, which can carry serious penalties, including deportation.
 - (d) Many migrants, most notably temporary migrants often omit to report wage theft as they are often in the country for a short time of time and have poor English proficiency.
 - (e) Young workers omit to report wage theft as they fear being blacklisted for complaining. This attitude is reinforced with higher unemployment rates among young workers.

5.2 The list is not exhaustive and is only intended to include some of the more common instances in which wage theft is not reported. Nevertheless, this paper endeavours to provide the EESBC resources and research which will contribute to the broader public debate and understanding of wage theft in Australia.

6. Qualitative Data Available

6.1 Resource from the Fair Work Ombudsman- Campaign Reports

- (a) The Fair Work Ombudsman (**'FWO'**) provides various sources and data which can help quantify the prevalence of wage theft, in particular their Campaign Reports which often audit businesses for compliance with various labour laws. The campaign findings usually lead to compliance and enforcement outcomes. Although the audits taken by the FWO are of samples rather than a comprehensive census they shed light on the incidence of wage theft around the nation.

National Annual Reports

- (b) The FWO reviews and completes thousands of disputes a year. In their National Compliance Monitoring Campaigns they assess whether businesses found to have errors in previous FWO audit campaigns are now compliant. For illustrative purposes, we have provided, below, examples of National Annual Audits, completed and prepared by the FWO.

National Follow up Campaign 2010¹

- (c) In the National Follow-Up Campaign which was conducted between January and May 2010 the FWO wrote to 465 employers requesting them to take part in the audit.
- (d) Whilst the majority of entities (79%) chosen were from previous investigations, 3% were selected for audit as a result of new intelligence acquired by the FWO.
- (e) The results were startling with a number of employers (31%) found not to be complying (with a combined total of 162 contraventions) and a number of employers (13%) requiring ongoing investigation.
- (f) An analysis of the 162 contraventions identified included the following contraventions:
 - 98 (60%) related to underpayments;
 - 29 (18%) contraventions related to record keeping requirements; and
 - 35 (22%) related to pay slips contraventions.

Contravention by Industry

- (g) Helpfully, the report also provided an analysis of contraventions by industries. In particular, it noted:
 - (i) The industries with the highest percentage of underpayment of wages were accommodation and food services and administrative support.
 - (ii) The industries with the highest number of record keeping and payslip contraventions were transport, postal and warehousing, health care and social assistance and construction.

Contravention by States

- (iii) The campaign also identified noncompliance within states. Most notably, it showed that in Victoria only 33% of employers were found to be compliant compared to 68% in Queensland and South Australia.

National Compliance Monitoring Campaign 2015²

- (h) The results of the campaign revealed improved results compared to the 2010 National Follow up Campaign. Of the 891 originally non-compliant businesses re-audited, 618 (69%) businesses were compliant with all requirements whilst 273 (31%) businesses had at least one error relating to:
 - (i) 119 (14%) related to pay slips/records;

¹ Fair Work Ombudsman, *National Follow Up Campaign Final report* August 2010

See: <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/campaign-reports>

² Fair Work Ombudsman, *National Compliance Monitoring Campaign 2015*, June 2017

See: <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/campaign-reports>

- (ii) 107 (12%) related to pay rates; and
- (iii) 47 (5%) related to both pay rates and pay slips/records.

Contravention by States and Industries

- (iv) The campaign also provided results by Industry (found in Appendix B of the campaign report) and a state compliance comparison (found in Appendix A of the campaign report).

Regional Annual Reports

- (i) The FWO also carries out regional campaigns in each State and Territory, not targeting particular industries. These reports also shed light on the comparative incidence of wage theft nationwide.
- (j) Although this report does not go into detail regarding the findings of the Regional Annual Reports we have listed a few for illustrative purposes:
 - (i) Western Sydney Campaign Report;
 - (ii) Victorian Compliance Campaign Report – February 2016;
 - (iii) Tasmanian Compliance Campaign Report – February 2016;

Industry Specific Reports

- (k) The FWO has also carried out reports targeting particular industries. For example in 2017 the FWO looked closely into the hospitality industry, breaking its findings down into accommodation/taverns and bars (Wave 1)³; restaurants, cafes and catering (Wave 2)⁴; and takeaway foods (Wave 3)⁵. Other examples include the National Building and Construction Industry campaign⁶; and the Textile, Clothing and Footwear Education Phase Campaign Report⁷.

6.2 Research Reports from FWO

- (a) Illegal phoenix companies have huge economic impacts on our economy, in particular they have a direct impact on employees through unpaid entitlements.

³ Fair Work Ombudsman, *National Hospitality Campaign 2012-2015 Accommodation pubs, taverns and bars*- November 2013.

⁴ Fair Work Ombudsman, *National Hospitality Industry Campaign Restaurants, Café's and Catering (Wave 2)* March 2016

See: <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/campaign-reports>

⁵ Fair Work Ombudsman, *National Hospitality Industry Campaign 2012-15 Takeaway Foods (Wave 3)* March 2016

See: <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/campaign-reports>

⁶ Fair Work Ombudsman, *National Building and Construction Industry Campaign 2014/15* July 2015

See: <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/campaign-reports>

⁷ Fair Work Ombudsman, *Designed to Fit Insights and outcomes from the Fair Work Ombudsman's education phase of the National Textile, Clothing and Footwear Campaign 2015*, 2015.

See: <https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/campaign-reports>

- (b) Illegal phoenix activity occurs when a company is deliberately liquidated to avoid paying creditors, taxes and employee entitlements. The company then transfers the assets to a new entity and continues to operate the same or a similar business under the same ownership.
- (c) PricewaterhouseCoopers Consulting (Australia) Pty Limited (PwC) was engaged by the Australian Taxation Office (ATO), the FWO and the Australian Securities and Investments Commission (ASIC) as members of the Inter-Agency Phoenix Taskforce to look into the direct costs and economy wide impact of illegal phoenix companies. They have released two reports:
- (d) PwC's 2012 report — Phoenix activity: Sizing the problem and matching solutions⁸; and
- (e) PwC's June 2018 report —Economic impact of potential illegal phoenix activity report⁹.
- (f) In their most recent report they found that between the years 2015-2016, illegal phoenix companies cost individuals approximately \$31 - \$298 million in unpaid entitlements i.e. unpaid wages, leave, payment in lieu of notice, redundancy, long service leave and superannuation.
- (g) The below diagrams provide a further understanding regarding the extent of wage theft as a result of illegal phoenix companies.

⁸ Fair Work Ombudsman, *Phoenix activity- Sizzling the problem and matching solutions* PwC's June 2012 report.

⁹ Fair Work Ombudsman, *Economic impact of potential illegal phoenix activity* PwC's June 2018 report.

Table 2: Estimate of direct cost to employees (nominal)

Financial year	Low	High
2012-13	\$129 m	\$483 m
2013-14	\$72 m	\$340 m
2014-15	\$103 m	\$380 m
2015-16	\$31 m	\$298 m

Figure 1: Direct cost of potential illegal phoenix activity (annual impact in 2015-16)



Source: PwC analysis using data provided by the ATO

6.3 Research Papers

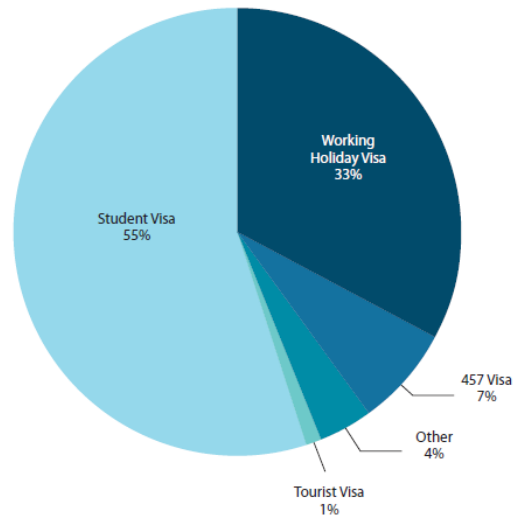
Findings of the National Temporary Migrant Work Survey¹⁰

- (i) A comprehensive study called the National Temporary Migrant Work Survey shed light on wage theft plaguing international students, backpackers, and other temporary migrants in Australia.
- (ii) The study provided confronting data regarding the extent of wage theft among migrants who were being remunerated below the minimum entitlements under Australian labour laws.

(a) The Sample size

- (iii) The survey was anonymous and open to individuals who had worked in Australia on a temporary visa.
- (iv) The study yielded 4,322 valid response. A break-down of survey participants is provided below:

¹⁰ University of New South Wales and University of Technology Sydney, *Wage Theft in Australian- Findings of the National Migrant Work Survey*, Laurie Berg and Bassina Farbenblum, November 2017
See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3140071



Visa category	Number of survey participants	Proportion of survey participants
Student visas ¹⁶	2,392	55%
Working Holiday Makers (Working Holiday (417) visa and Work and Holiday (462) visa)	1,440	33%
Skilled temporary work visa (457 visa)	301	7%
Tourist visa	34	1%
Other ¹⁷	155	4%
Total	4,322	100%

(b) The Survey

- (i) The survey consisted of 32 multiple choice questions in addition to a number of follow up questions (which included a few open ended questions).
- (ii) Questions on features of employment focused on participants lowest paid jobs (which as discussed is a limitation of the study).

(c) The Results

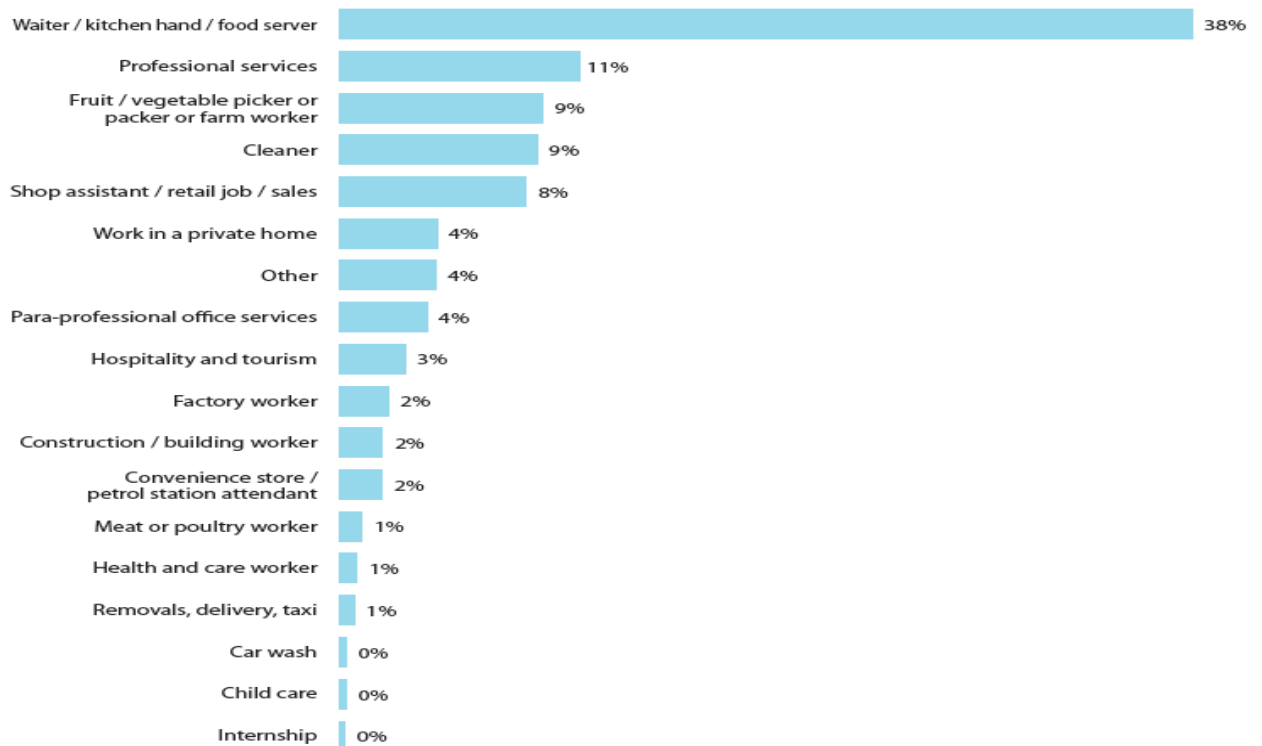
(i) Extent of underpayment

- A. At the time the survey was conducted, the legal minimum wage for casual workers was \$22.13 per hour (not under an award).
- B. The result found that:

- 30% of those surveyed earned \$12 per hour or less (approximately half of the minimum wage for a casual employee);
- 46% earned \$15 per hour or less; and
- 61% earned \$17 per hour or less.

(ii) Lowest paid job by Industry/Job

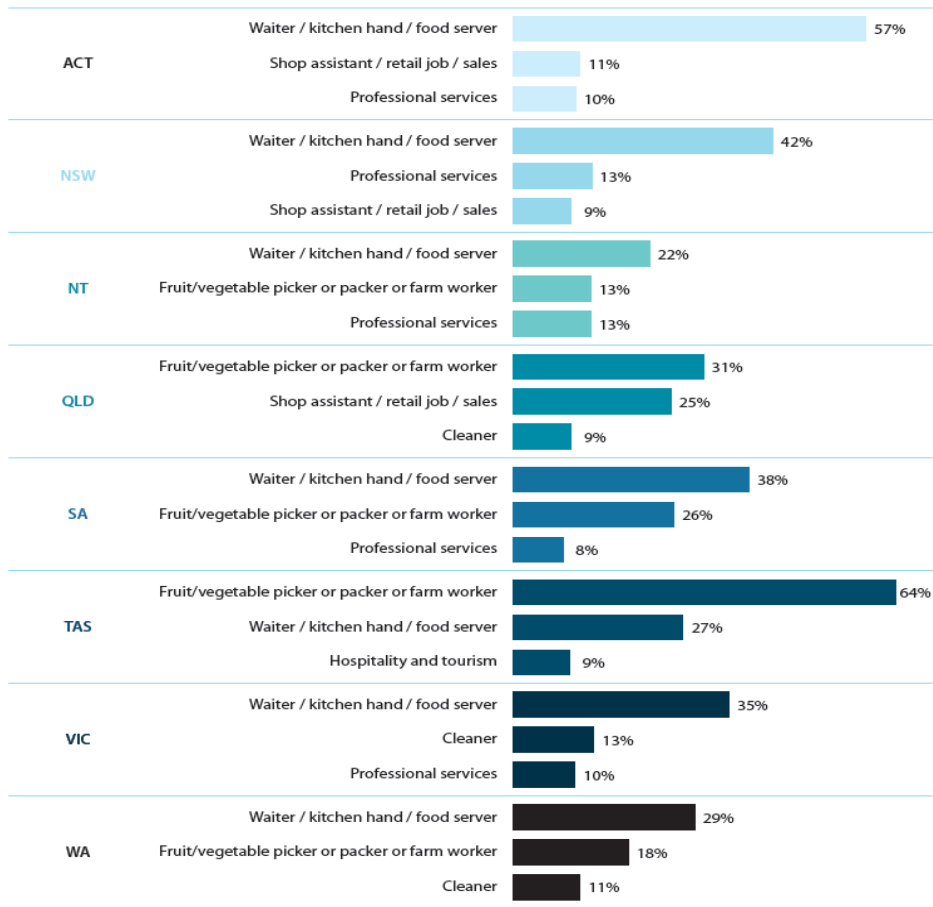
- A. Participants were presented with a number of simple job descriptions commonly undertaken by migrants, with the option of providing an open ended response to ensure that the options were not limited. The participants were asked to identify their lowest paid job.
- B. The results of the report are illustrated below and confirm hospitality was undoubtedly the industry where migrants received the lowest wages.



(iii) Lowest Paid Job in States and Territories

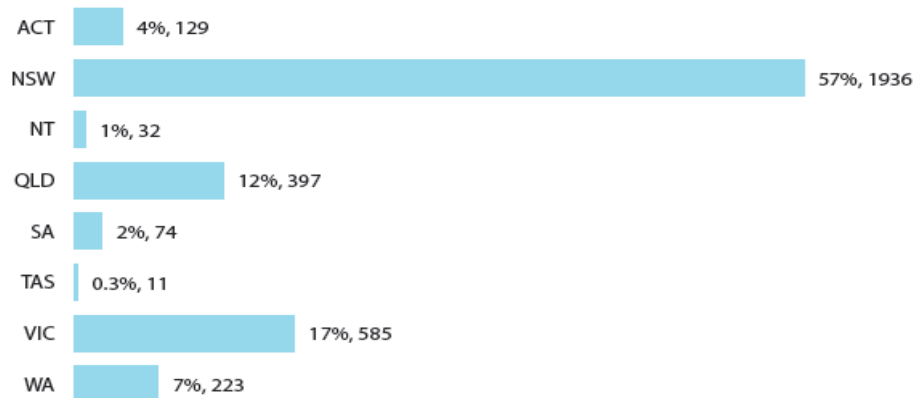
- A. The study also categorised the lowest paid jobs based on states/territory. For each state, the 3 jobs with the highest number of participants were noted. For example, in Queensland the 3 lowest paid jobs included:
- Fruit/vegetable picker or packer or farm work (31%)
 - Shop assistant/retail job/sales (25%)

- Cleaner (9%).



(iv) Lowest Paid Job by State and Territories

- A. The survey also revealed that most participants had undertaken their lowest paid job in NSW (57%), closely followed by Victoria (17%) and QLD (12%).



Research into Unpaid Work Experience (UWE) in Australia¹¹

- (i) This report was commissioned by the Commonwealth Department of Employment to report on the characteristics and employment outcomes of UWE in Australia.

(a) The Sample size

- (i) The report, was based on the results of a representative survey of 3,800 Australians aged between 18-64 years. Younger respondents (18-29) were consciously over-sampled on the basis that this group was more likely to have participated in UWE.

(b) The Survey

- (i) Participants were asked questions about UWE in the last five years predating the survey.

(c) The Results

(i) Extent of underpayment

- A. The results showed that UWE is very common in Australia, with more than half (58%) of respondents aged 18-29 and just over a quarter of respondents (26%) aged 30-64 being impacted by at least one episode of UWE within the five years from when the survey was conducted. Overall, the report found that a third of Australians (34%) aged 18-64 reported at least one episode of UWE in the last five years.

(ii) Extent of underpayment by Job/Industry

- B. The report confirmed that the most common industry UWE were reported included Education/Training, Social/Community Services and Health Care which amounted to approximately 40% of all UWE episodes.

Research into Unpaid Internships¹²

- (i) In a bid to cut costs, employers often increase their use of interns, sometimes at the expense of paid employees. Those most vulnerable are young eager workers who willingly work for free in order to 'break into the business' or 'get their foot into the door'.
- (ii) The attitude of many employers seems to be that interns should not be paid on the basis that they gain valuable education, on the job training and don't produce significant work. However, there is evidence which suggests the contrary, that unpaid interns produce meaningful work and make significant contributions to businesses. The research discussed below, prepared by interns Australia

¹¹ *Unpaid Work Experience in Australia Prevalence, nature and impact* prepared by Dr Damian Oliver (UTS), Professor Paula McDonald (QUT), Professor Andrew Stewart and Associate Professor Anne Hewitt (University of Adelaide) December 2016

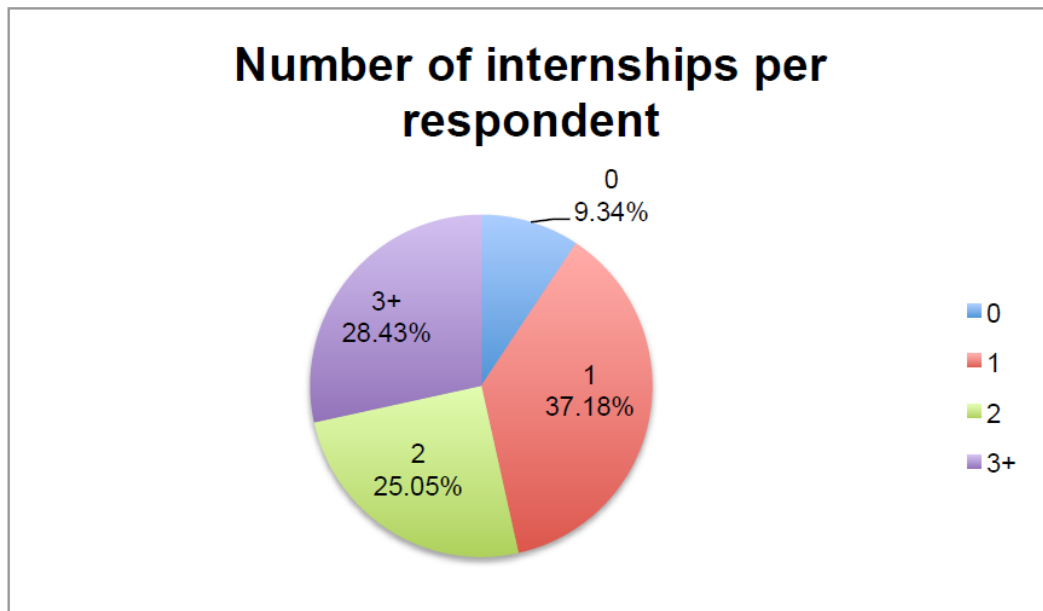
See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3140071

¹² *Interns Australia 2015 Annual Survey*, Prepared by interns Australia- November 2015.

attempts to shed some light on the extent of exploration amongst unpaid interns.

(a) The Sample size

- (i) This was a report prepared by interns Australia.
- (ii) 503 respondents were asked about their experiences with internships, whether they had undertaken an internship or not. However, the results provided that:
 - A. 90.61% of respondents had completed at least one internship;
 - B. 53.47% had completed two or more internships; and
 - C. 28.98% of these respondents had completed three or more internships.



(b) The Survey

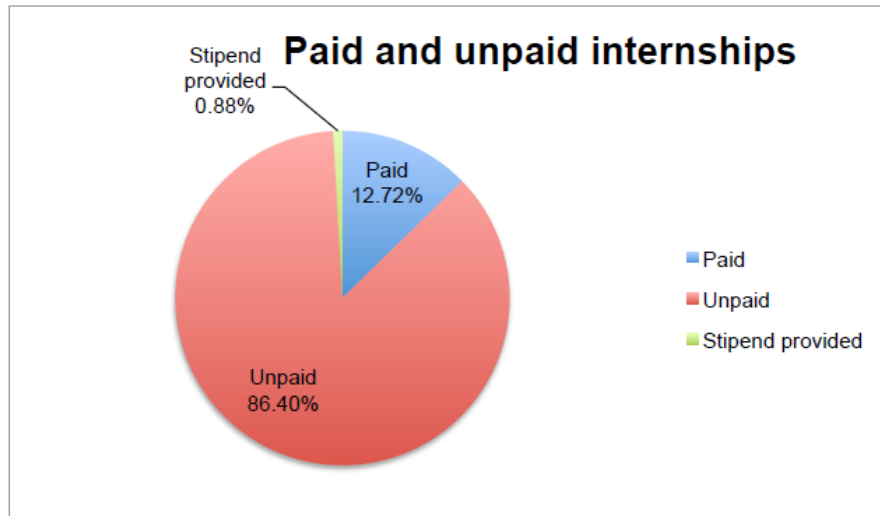
- (i) The online survey was conducted over a period of two months between August and October 2015

(c) The Results

(i) Extent of underpayment

- A. The results were startling. They revealed that out of the 456 respondents who had completed at least one internship.
 - 12.72% (58) were paid at least minimum wage for their placement.
 - 86.40% (394) were not paid or paid below minimum wage.

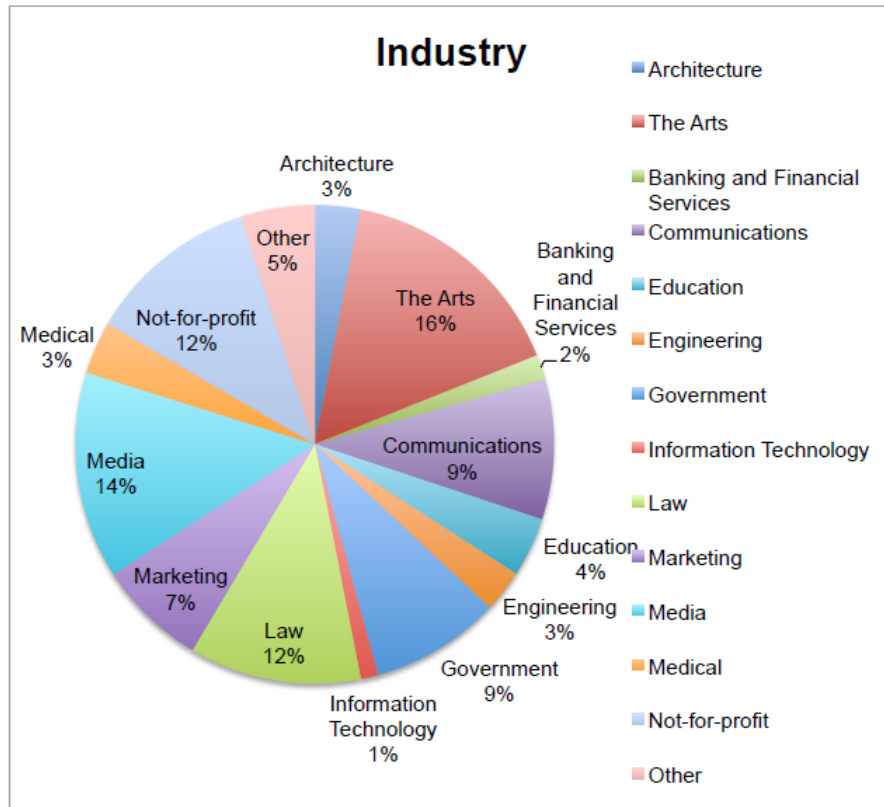
- 0.88% (Less than 1 per cent) were not paid, but received a travel or meal allowances/reimbursements.



(iii) Extent of underpayment paid job by Industry

A. The survey noted that internships were being carried out across a range of vocations. It found that the most common instance of unpaid internships were in:

- Arts 15.76%
- Media 13.88%
- Non-profits 11.59%
- Law 11.53%
- Communications 9.41%;
- And Government 8.94%.



Research into foreign student workers underpaid¹³

(a) The Sample size

- (ii) This was a study undertaken by the University of Sydney Business School. The survey was taken from 1433 international students.
- (iii) Approximately 73% of the sample participants originated from China and 75% were between 20 and 24 years of age, most of them identifying as new to the workforce.

(d) The Results

(i) Extent of underpayment

B. The result of the survey found that at least 60% of international students working in Sydney were being paid below the minimum wage of \$17.29 per hours.

C. It also revealed that:

- 35% were being paid \$12 or less;
- Only 49.8% of all students received a pay slip in their most recent work period (a requirement of s 536 of the FWO);

¹³*Multiple frames of reference: Why international student works in Australia tolerate underpayment* prepared by Stephen Clibbord, The University of Sydney Business School, Australia 2018.
See: http://sydney.edu.au/business/news/2016/foreign_student_workers

- 40.2% of participants employers failed to withhold any tax from pay (as required under tax laws);
- Only 25% contributed to compulsory super contributions;
- D. The study revealed that Chinese international students were more vulnerable with 73.5% being paid less than the National Employment Standard ('NES') and 43% being paid \$12 per hour of less.

(iv) Contravention by Industry/Job

- E. The report also revealed that respondents working as wait staff were paid less than the minimum wage for a casual worker, which at the time of the survey was \$23.09 per hour. The pay per hour was reported from \$8 to \$23 per hour with 91% earning \$18 per hour or less.

Investigation into Foodora

- (i) The gig economy is the collection of different markets that match providers to consumers on a job to job or 'gig' basis with no guarantee of ongoing work. The advent of internet based technologies or platforms or smartphone applications help support the economy as it allows a stage for providers of services to earn money by hiring out their services to complete various tasks. Labour transactions between the provider of services and consumer are facilitated for by for-profit organisations who charge users for using their platform. An example of such a platform is Airtasker or Foodora.
- (ii) The corner stone of the gig economy is the way the for-profit organisations engage workers. Many of them engage providers of services as 'independent contractors' so as to avoid their responsibilities to provide minimum standards or employment protections.
- (iii) Unfortunately, there is little quantitative data on the gig economy workforce, possibly due to the uncertainty of its characterisation.
- (iv) It has been contended that Foodora riders were in substance common law employees, however Foodora maintained that they were independent contractors.
- (v) The food delivery giant has recently gone into administration, a move which will place all legal action against it for wage underpayment on hold.

Elements of the Multifactor Test	Foodora	Deliveroo	UberEATS
Level of control, supervision and direction	<ul style="list-style-type: none"> Set shifts Management direct worker hours Supervisors monitor work Workers have been dismissed for working for competitors Skills and Fitness test in recruitment process 	<ul style="list-style-type: none"> Initial set shifts and later pay per delivery Supervisors engage and direct workers regarding performance and hours Tolerance of Deliveroo workers operate on multiple platforms Skills and Fitness test in recruitment process 	<ul style="list-style-type: none"> No set hours of work No testing or recruitment process No barriers to workers operating on other platforms Evidence of close monitoring of performance
Uniforms and Branding	<ul style="list-style-type: none"> Requires workers to hire/purchase and wear Foodora uniform and branding on own equipment (i.e. delivery box on bicycle) 	<ul style="list-style-type: none"> Required workers to hire/purchase uniform and delivery box with Deliveroo branding, little evidence that workers are required to wear the uniform 	<ul style="list-style-type: none"> No uniform Required to hire/purchase delivery bag with no UberEATS branding
Payment	<ul style="list-style-type: none"> Fixed hourly rate and/or amount per delivery Pay determined by Foodora without negotiation with workers 	<ul style="list-style-type: none"> Piece rate Pay determined by Deliveroo without negotiation with workers 	<ul style="list-style-type: none"> Piece rate Pay determined by UberEATS without negotiation with workers
Not engaging other services or customers	<ul style="list-style-type: none"> No evidence that workers had their own customers or worked independently on other delivery jobs 	<ul style="list-style-type: none"> No evidence that workers had their own customers or worked independently on other delivery jobs 	<ul style="list-style-type: none"> No evidence that workers had their own customers or worked independently on other delivery jobs

(vi) The above is a table of three major food delivery platform¹⁴. It shows the various approaches they took in engaging its workers. It is clear that Foodora had a clear direct relationship with its workers by requiring them to wear a uniform, engaging them for set shifts, and requiring them to work under supervision etc.

(vii) The writer recommends that EESBC monitor any audits carried out by the ATO or FWO into any for-profit organisations engaging workers on a job to job basis. The audits may release qualitative data regarding the prevalence of wage theft within the gig economy.

6.4 Resources from Unions

Audit on Job Advertisements ¹⁵

(i) A study carried out by Unions NSW audited advertisements on Chinese, Korean and Spanish language websites in a bid to ascertain the incidences of businesses advertising positions with rates of pay below the minimum Award wage.

(a) The Sample size

¹⁴ See: <https://theconversation.com/why-gig-workers-may-be-worse-off-after-the-fair-work-ombudsmans-action-against-foodora-98242>

¹⁵ Unions NSW, *Lighting up the Black Market- Enforcing Minimum Wages*

- (i) The audits were carried out on online job advertisements written in Chinese, Korean and Spanish. The advertisements were randomly selected from websites Hojunara (Korean), Sydney Today (Chinese) and a number of Facebook groups targeted at Spanish speakers from Latin America.
- (ii) The audits were carried out on a total of 200 job advertisements in two separate audits in March 2016 and April 2017, with 43% being from Chinese advertisements, 36% from Korean and 21% from Spanish advertisements.

(b) The Results

(i) Extent of underpayment

- A. 78% of business advertisements reviewed were found to be advertising below the minimum Award rate;
- B. The average underpaid job was advertised as paying \$14.03 an hour (an underpayment of \$5.28 a hour compared to the minimum award at the relevant time the audits were taken);
- C. Lowest rates of pay were \$4.20 and \$9 per hour for a Nanny and Office Clerk respectively, both well below the minimum award.
- D. Alarmingly, the number of underpaying jobs advertised grew in the subsequent audits. Specifically, in 2016, 74% of jobs were advertised below the relevant award, however this increased to 83% in 2017. Nevertheless, the extent of the underpayment remained relatively unchanged between the two consecutive years.
- E. Importantly, the Unions NSW audit did not collect any information regarding the payment of penalty rates, casual loading, leave or superannuation.

The report suggested that the degree of underpayment would have been significantly higher if this information had been included. This was a limitation of the report, which could not have been improved given an audit of the job advertisements would have failed to reveal this information. It was suggested that companies that advertised below the minimum rates were unlikely to make additional award payments.

(ii) Contravention by Industry/Job

- F. The report noted that certain jobs attracted gross undercutting of wages comparatively to others. It made the following findings:
- G. Hospitality - Of the jobs audited 97% in the hospitality industry were below the Award minimums, with the lowest

being \$10 an hour (with three and seven businesses advertising at this rate in the 2016 and 2017 audits respectively).

- H. The average rate of pay in hospitality across the two audits was \$13.60 per hour which was \$5.79 per hour below the average Award minimums.
- I. The report found that hospitality advertisements were commonly found on Chinese and Korean language websites (made up 50% of the hospitality advertisements).
- J. Retail - Of the retail industry jobs audited, it was found that 85% of the advertisements audited paid below the Award minimums. The average hourly rate advertised for retail jobs was \$14.08, approximately \$5.30 below the hourly rate paid under the Award.
- K. Cleaning - The report found that 65% of cleaning advertisements audits advertised positions below the Award rates of pay. The average rate of pay in cleaning across the two audits was \$17.26 which was approximately \$1.40 an hour below the average minimum award.

<i>Industry</i>	<i>Number of advertisements</i>	<i>Average advertised hourly rate</i>	<i>Average Award minimum hourly rate</i>	<i>Proportion of advertisements with below Award rates of pay</i>
Hospitality	86	\$13.60	\$19.39	97%
Cleaning	37	\$17.26	\$18.66	65%
Transport	16	\$17.72	\$18.98	56%
Retail	13	\$14.08	\$19.38	85%
Construction	13	\$20.54	\$21.90	62%

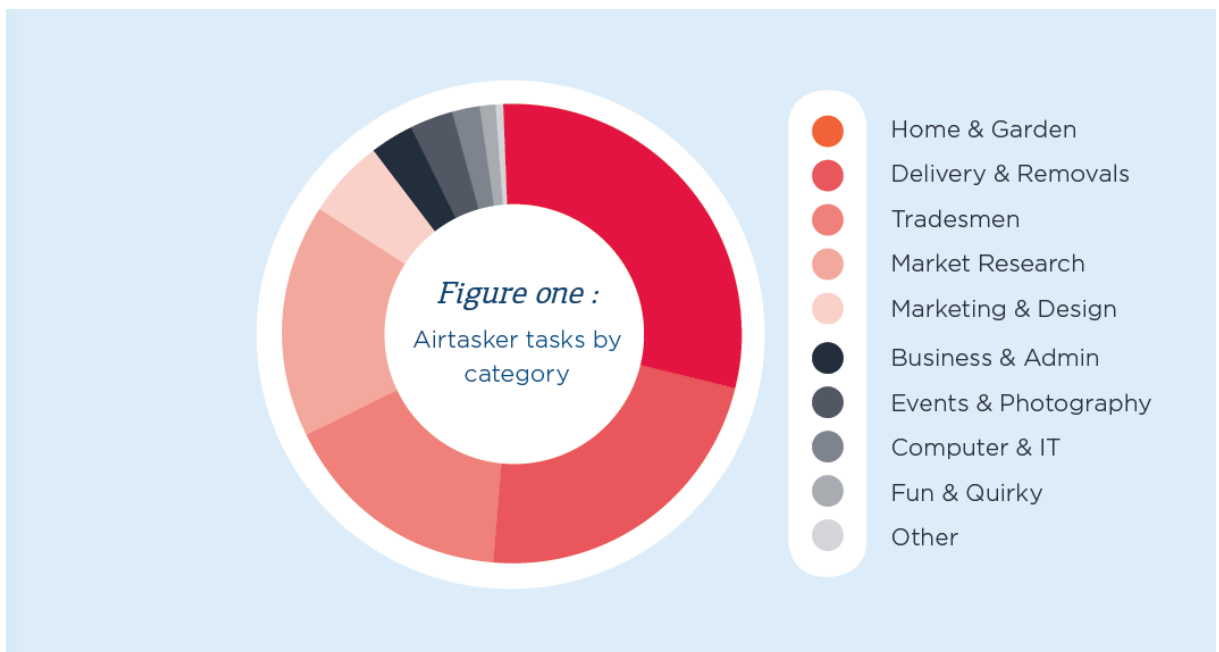
Exploitation of gig economy¹⁶

- (i) This was a case study undertaken by Unions NSW to consider the labour practices within the gig economy with a focus on one provider in particular, Airtasker. It considered how Airtasker, like other for profit organisations engage workers as ‘independent contractors’ to circumvent Australian labour laws.

(a) The Sample size

¹⁶ Unions NSW, *Innovation or Exploration – Busting the Airtasker Myth*

- (i) The research targeted Airtasker. In summary, Airtasker is an online platform that allows a job poster to create a task and assign a rate for its completion. A provider of services who is then interested in that task can pitch for that job (bidding above, below or at the rate advertised by the job poster). The payment is not released to the provider of the service until the job has been completed.
- (ii) Most of the services offered on Airtasker include delivery and removals, cleaning, delivery and IT services, but also extend to events and photography, market research and marketing and design.



(b) The Results

(i) Extent of underpayment

- L. Airtasker's model treats providers of services as independent contractors, thereby bypassing the requirements for minimum payments and employment safety nets.
- M. Effectively, it allows a provider of services control over their rate of pay, by bidding on tasks.
- N. Additionally, the provider of the service is required to account 15% of their pay to Airtasker which further reduces their take home pay.
- O. In 2014, Airtasker released an information sheet which specified the recommended rates of pay for most of its popular jobs. The case study captured a few of the rates which are shown below:

Table one:

Job	Rate recommended by Airtasker		Minimum Award Rate (per hour)
	Paid by poster (per hour)	Received by worker (per hour)	
Data entry	\$17.00	\$14.45	\$23.53 ²⁸
Cleaner	\$20.00	\$17.00	\$23.64 ²⁹
Sales	\$25.00	\$21.25	\$24.30 ³⁰

- P. The recommended rates published by Airtasker provided in hand figures to the service providers which were well below the minimum award. For example, based on Airtaskers recommendations data entry service providers should be receiving \$9.07 below the minimum Award and service providers offering cleaning services should be receiving \$6.64 below the minimum Award.
- Q. The study also suggested that Airtasker encourages providers of services are to try and outbid each other.
- R. The case study highlighted that payments made through Airtasker did not capture things like leave loading, casual loading, workers compensation or other entitlements commonly associated with permanent employment.
- S. Whilst proponents of online platforms like Airtasker, Deliveroo and UberEats suggest that they are a quick way to match providers of services with consumers, the model raises issues regarding sham contracting and wage theft.
- T. Alarmingly, the report also revealed that in 2013 Airtasker launched Airtasker business for business to engage providers of services without providing them minimum wage payments or other workplace entitlements. Wealthy business are therefore able to engage providers of services without having to provide Workers Compensation, pay superannuation etc.
- U. The difference between treating someone as an employer and independent contractor is significant. They can fall under different laws, receive different protections and confer different obligations.
- V. As it stands, many providers of services are still heavily dependent on the for-profit organisations who charge them for using their platform. It is therefore hard to envisage how they could be viewed as independent contractors. This dependent relationship between service

providers and Airtasker should require Airtasker, at the very least, to treat the relationship as a labour hire arrangement. In this regard, there is nothing stopping a business from replacing staff with service providers from such platforms.

- W. Arguably, the 15% fee taken by Airtasker should require Airtasker to provide service providers with appropriate Workers Compensation.

7. **Conclusion**

- 7.1 In summary, while Maurice Blackburn's research is not exhaustive, the reports and studies mentioned contain specific statistics relating to the scale and extent of wage theft across Australia.
- 7.2 The research conducted by Australian Universities, peak union bodies and organisations confirm that wage theft is an endemic across different industries and professions and not confined to those that are commonly referred to in the media.
- 7.3 The findings from the research are bleak, but provide a much-needed overall picture of wage theft across Australia. They demonstrate an urgent need to prevent wage theft which has proliferated over recent years and to stop the ripple effects of wage theft on families, business, organisations and the overall economy.
- 7.4 Maurice Blackburn hopes that the research will help drive evidence based policies and support services (especially for educational institutions to assist international students) and provide the impetus for legislative change.

Yours faithfully,

Giri Sivaraman
MAURICE BLACKBURN