

Submission to the Inquiry into Wage Theft in Queensland

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26 July 2018

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

eesbc@parliament.qld.gov.au

Dear Ms Linard – Committee Chair

My husband Glenn worked for [REDACTED] as a new home sales consultant. He worked for them from 06 September 2014 until the end of July 2017. Glenn was an employee, with the employer paying superannuation contributions. His base salary was \$30,000 per annum plus 1% commission as part of his remuneration.

Glenn's commission rate was lower than other sales consultants because after he took a deposit from a client they were then handed over to a contract manager. The contract manager handled all the paperwork with the client from then on. Glenn had always done the contracts himself, but [REDACTED] (Managing Director) wanted this system employed at the Rochedale display centre. This was done to free up his time as he contracts can take several hours to finalise and because he was working in a busy display village. This also meant that he had to work twice as hard to on the same earnings as other consultants who were on a higher commission rate.

In 2017, after being with [REDACTED] for 2 ½ years, Glenn decided to leave for the following reasons:

1. The company was very slow in paying the commission.
2. It was costing him more per week to go to work than he was earning.
3. He was tired of working so hard putting in long hours for little reward.

Since leaving on at the end of July 2017, Glenn has been fighting to get his commissions (tens of thousands of dollars) that were owed to him from [REDACTED]. He has been paid some money (somewhere between \$25,000 and \$35,000) but is still fighting for the rest.

When Glenn handed in his resignation [REDACTED] advised him that:

1. Glenn is not entitled to his commissions because he had resigned.
2. It is at [REDACTED] discretion whether to pay Glenn or not.
3. [REDACTED] would determine how much he would pay Glenn if he agreed to pay at all.

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On the 14 October 2017 Glenn sent an email to [REDACTED] advising him of the 12 clients he had not been paid commission for. On the 16 October [REDACTED] responded in writing confirming what he had advised Glenn of verbally. See Attachment 1.

We have spoken to the Australian Taxation Office, they aren't interested, and both the Fair Work Ombudsman and the Fair Work Commission said they are unable to assist us in this matter and told us to engage a solicitor.

We have spoken to a solicitor who said "that as he was an employee, he is entitled to 100% of his commission" and "an Employer does not have the right to use their own discretion on what they do or do not pay".

We have sent a letter of demand to [REDACTED], but we have been ignored. See Attachment 2.

As working people we need this money to live on, so why are these employers allowed to get away with not paying their employees, and why is this industry not regulated by the Government?

[REDACTED] are holding their Sales Consultants to ransom with contracts that are unfair and then refusing to pay commission earned if they leave. They are using bullying tactics by threatening to ban them if they resign, saying they will never work for anyone in the same industry every again.

I (Clare) was also employed by [REDACTED] as a hostess I worked weekends, public holidays and occasionally some days during the week. They paid me a flat rate of \$25 an hour and this the same rate for another hostess in their employ. When I questioned them about penalty rates, they stated I was not entitled to them as I had signed a contract.

When Glenn left the company, they sacked me and the reason given to me was "it was inappropriate for me to work there". I contacted the Fair Work Commission after I left and was informed that they were underpaying me (contract or no contract). The amount of underpayment was \$11,300. I believe that I was the only person who took this action. They also stated that I could have gone for unfair dismissal. I decided not to and now I wish I had.

When talking to the Fair Work Commission I found out that "A contract is null and void if the contract amount is below the award rate".

If there is NO governing bodies to help recoup commissions and commissions are taken out of the equation, then [REDACTED] were still underpaying Glenn. The truth of the matter is that the commission is priced into every project which goes to contact and this is standard practice by all builders of new homes. So it isn't the builders who pay the commission but the home purchaser, so by reducing the amount of commission [REDACTED] r [REDACTED] Glenn then that amount would have gone directly into the pocket of [REDACTED] as they would not have reduced the amount that was paid by the home purchasers.

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We have been advised that the following is the correct Award Rate

Award Rate (Sales Consultants)	\$40,806 - \$74,812
Glenn's rate	\$30,000

Glenn has been in the industry for over 15 years and is very experienced, so he would have been at the top end of the award scale. Glenn was an employee not a contractor and therefore should have been entitled to more than the \$30,000 per annum.

After working in this industry for so long, Glenn has never worked for such a low paying employer and it wasn't until some months after he started working for them that they lowered his commission rate from 2% to 1% just because he was working in a busy centre as explained previously.

██████████ are ripping off their employees one way or another. ██████████ have not given either Glenn or myself pay slips and to the best of our knowledge all employees in a sales role do not receive payslips. The Fair Work Act 2009 - Section 536 states that:

Employer obligations in relation to pay slips

(1) An employer must give a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work.

Note 1: This [subsection](#) is a civil remedy provision (see Part 4-1).

Again the issue we have is the only way for us to have this enforced is to sue the employer in a civil matter. Why does the Government not charge and sue these employers. We understand that these are individual employers but we believe that once a few of them are sued and fined then it would perhaps make others stop and think twice about ripping off their staff. Something should be done to stop these failings. Without a payslip how can we prove that we are not being paid correctly? Please see Attachment 3 the details that should be included on a pay slip.

Where do we go to get heard and get help with getting the money that ██████████ owe us? Surely in this country this shouldn't happen, isn't everyone entitled to be paid for the work that they do, and isn't it the Australian way – a fair wage for a fair days work, apparently not if you work for ██████████.

Thank you for taking the time to read our story.

Clare and Glenn Bergin

██████████

██████████

Mobile: ██████████

Email: ██████████

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Attachment 1 Page 1



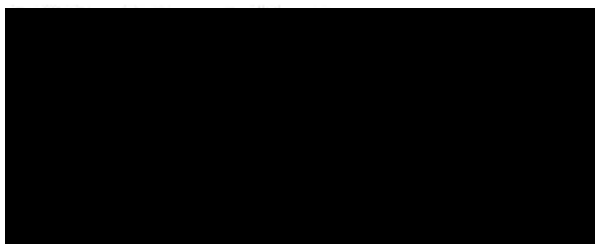
From: [Redacted]
Sent: Monday, 16 October 2017 10:13 AM
To: Glenn Bergin
Cc: [Redacted]
Subject: RE: Commission Claims October

Hi Glen,

When giving two weeks notice I confirmed to you that Commissions are payable whilst you are in the employ of the Company.

You are entitled to be paid for any event that attracts a commission payment as per your letter of employment up to and including you last day of employment/ end of notice period.

Regards



From: Glenn Bergin [Redacted]
Sent: Saturday, 14 October 2017 3:17 PM
To: [Redacted]
Subject: Commission Claims October
Importance: High

Hi Jeff,

The last email I received from [Redacted] requesting payment of outstanding commissions informed me that I was to forward any future correspondence directly to you.

I apologise for not getting back to you prior to now but I have been extremely busy settling into my new role.

Please see below list of current clients I secured for [Redacted] prior to my resignation that I am submitting for commission payment due for October 2017.

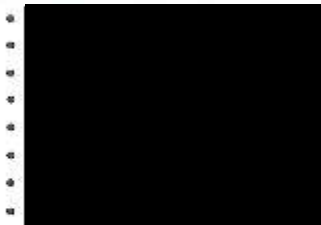
As I do not know exact amounts owing as I am not in receipt of current PC1 documents, plans or workflow spreadsheets, I will need to request please that you calculate the amounts due for each job and if I am to claim 50% or the total 100% owing on those projects still unpaid.

Please note I have not made any commission claim for the month of September:

- [Redacted list item]

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Attachment 1 Page 2



I am aware that a number of the above jobs have either ACC'd, contract signed (5% Bal of deposit paid) or site started.

I look forward to receiving the commission payments due for October and your reply email confirming which jobs are due now and which are still outstanding.

Do not hesitate to contact me should you have any questions or would like to discuss any matter relating to this email.

Thanking you in advance,

Glenn Bergin  


Sent from Mail for Windows 10

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Attachment 2.

[REDACTED]

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**From:** Glenn Bergin [REDACTED]  
**Sent:** Wednesday, 28 March 2018 4:19 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Letter Of Demand

[REDACTED]

I have recently been in contact with the ATO.

The contact at this office stated that as I was an employee with a remuneration package consisting of a base salary plus commission with superannuation contributions paid by the employer I am entitled to 100% of any outstanding commissions.

They also went on to state that the employer does not have the right to use their discretion on whether they will pay the employee or not any outstanding commissions owed. They further stated that the outstanding commissions owed are to be paid in full.

I am therefore requesting from you the following:

1. (a) A cost breakdown of the commissions and contract value for each (paid plus outstanding) or (b) A copy of the 'Work Flow' spreadsheet containing this information.
2. That all commissions still outstanding be paid in full within seven (7) business days.

If my requests are ignored or not forthcoming within this time I will have no hesitation but to take this matter further.

Glenn Bergin

Sent from [Mail](#) for Windows 10

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**ATTACHEMENT 3****What has to be on a pay slip?**

Pay slips have to cover details of an employee's pay for each pay period. Below is a list of what to include:

- employer's and employee's name
- employer's Australian Business Number (if applicable)
- pay period
- date of payment
- gross and net pay
- if the employee is paid an hourly rate:
  - the ordinary hourly rate
  - the number of hours worked at that rate
  - the total dollar amount of pay at that rate
- any loadings, allowances, bonuses, incentive-based payments, penalty rates or other paid entitlements that can be separated out from an employee's ordinary hourly rate
- the pay rate that applied on the last day of employment
- any deductions from the employee's pay, including:
  - the amount and details of each deduction
  - the name, or name and number of the fund / account the deduction was paid into
- any superannuation contributions paid for the employee's benefit, including:
  - the amount of contributions made during the pay period (or the amount of contributions that need to be made)
  - the name and / or number of the superannuation fund the contributions were made to.