



QUEENSLAND
TOURISM INDUSTRY
COUNCIL

The Voice of Tourism

**SUBMISSION TO THE EDUCATION, EMPLOYMENT
AND SMALL BUSINESS COMMITTEE**

ON THE

INQUIRY INTO WAGE THEFT

JULY 2018

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OVERVIEW

The Queensland Tourism Industry Council (QTIC) welcomes the opportunity to respond to the Education, Employment and Small Business Committee regarding the *Inquiry into wage theft in Queensland*.

As the peak body for tourism, QTIC is concerned with the reputational damage that wage theft has the potential to have on the industry. Unscrupulous acts, such as wage theft, undermine the integrity of the industry and destabilises the legitimacy of businesses operating within it. With a need for more than 23,000 more workers in the industry by 2020, QTIC supports strategies to foster positive working environments and perceptions of the tourism and hospitality industry.

Based on the analysis conducted in this submission, QTIC recommends the following:

- Monitoring of industry related Facebook sites to identify employers that are not compliant
- Working with Universities, migration services and training providers to provide suitable communication regarding reasonable working hours, minimum wages and other HR legislation
- Partnering with industry to promote case-studies of best practice and positive outcomes of operating within legislative requirements
- Tightening legislation and increase penalties surrounding non-compliance.

QUEENSLAND TOURISM INDUSTRY COUNCIL

QTIC is the state peak body for tourism in Queensland. QTIC is an independent private sector, membership-based tourism industry organisation.

All of Queensland's 13 Regional Tourism Organisations (RTOs) are members of QTIC, as are 20 industry sector associations and in excess of 3,000 regional members, operating in all sectors of the tourism industry.

QTIC works in partnership with government agencies and industry bodies at a local, state and national level and is a member of the Australian Tourism Industry Council (ATIC).

TOURISM IN QUEENSLAND

The tourism industry in Queensland contributed \$25.4 billion to Queensland's Gross State Product (GSP), representing 7.8% of total GSP and generated \$7.4 billion in exports in the year ending June 2017¹, making it one of the state's largest export industries only behind coal and food.

In recent years, government and business communities recognise that tourism is contributing significantly to economic growth in Queensland and generating significant numbers of new jobs. Due to a slowdown in the resource industry, tourism has experienced resurgence and is flourishing against a relatively soft economic backdrop. In Deloitte's *Tourism and Hotel Market Outlook*², it is reported that international arrivals to Australia grew at twice the rate of global outbound travel and international visitation "continues to outshine broader economic performance". Forecasts to 2020 indicate tourism will continue to grow faster than the wider economy.

The World Travel and Tourism Council³ project travel and tourism employment will grow 5.8% (compound annual growth) over the next decade in the Asia Pacific region. In contrast, total economy growth is projected at 4.1% per annum and other industries such as mining and agriculture are forecast to grow at 1.8% and 2.2% per annum respectively.

The five-year average growth rate for total visitor nights in Queensland is projected to be 4.0% over 2014–15 to 2019–20, or 3.9% over 10 years. This compares to 4.4% total five-year average annual growth for Australia, or 3.8% over 10 years.

Tourism and Employment

Tourism is a key economic driver in Queensland. There are over 54,000 tourism businesses operating across the state in sectors including, but not limited to, accommodation, transportation, tour operators, travel agencies and marine operations. One in ten businesses in tourism is a small or medium sized enterprise. The industry supports employment and community growth, employing more than 217,000 people directly and indirectly, or 9.1% of all people employed in Queensland¹. This is substantially more than mining (2.5% of employment) or agriculture, forestry and fishing combined (2.2% of employment). There is a diversity of jobs within the tourism industry with 11 occupations representing the majority of workers in the industry⁴. Of those directly employed in tourism, two thirds are employed outside of Brisbane, highlighting the value of tourism in regional Queensland⁵.

¹ Tourism Research Australia, State Tourism Satellite Accounts 2016-17

² Deloitte, *Tourism and Hotel Market Outlook*, Edition 1, 2017

³ World Travel and Tourism Council. 2017. *Travel & Tourism Economic Impact 2017 Asia Pacific*

⁴ Queensland Government Department of Tourism Education and Small Business (DETESB) identified occupations: Tourism Workforce profiling: Accommodation and hospitality managers; Housekeepers and Cleaners; Fast Food Cooks and Kitchen Hands; Receptionists; Waiters; Bar attendants and Baristas; Chefs; Cooks; Café workers; Travel and Tourism Advisers; Air Transport professionals

⁵ Tourism Research Australia, 2015-16, Queensland Tourism Satellite Account

On average around 79% of tourism employees are sourced from the local region, of the remaining, 11% are from interstate or intrastate and 4% are working holiday makers⁶. Temporary visitors to Queensland play an integral role in the provision of tourism experiences and are vital to an industry with a skills shortage (see box 1).

Box 1: Queensland tourism labour shortage

Tourism Research Australia and Deloitte Access Economics estimate an implied current shortage of **10,388** employed persons in the Queensland tourism industry. With strong projected growth for the tourism industry it is anticipated that there will be an accumulated demand for **23,481 new workers by 2020**⁷.

The 2017 *Tourism Workforce Plan*⁶ explores opportunities to develop the tourism workforce to address the deficit of skilled workers. As part of the plan, one of the core goals is build a distinct brand as a desirable career opportunity that capitalises on Queensland's reputation as a leading domestic and international visitor destination. To achieve this, the industry must be presented as an industry with opportunity, diversity and integrity. Furthermore, the plan highlights the need for industry to take ownership of the shift required in culture to where workplaces value and nurture skills development for all staff leading to quality service provision and increasing productivity.

FEDERAL TOURISM INITIATIVES

Tourism 2020

In December 2011, the Federal Government announced its national strategy *Tourism 2020*, with a goal of doubling the value of tourism to \$140 billion by 2020. One of the key factors that will dictate the success or failure of Australia's tourism industry to meet its global potential is to meet the expected surge in demand with sufficient increases from the supply side of the tourism industry, such as tourism, aviation capacity and transport infrastructure.

As part of the Tourism 2020 plan, Australian, state and territory governments and tourism industry stakeholders agreed to work together to deliver several key reforms consistent with the four policy priorities. The key reform areas are:

- Increase cross portfolio collaboration within all levels of Australian Governments to plan and drive reform of the visitor economy
- Improve visa arrangements to make Australia's visitor visas easier, quicker and competitive
- Improve aviation capacity and customer experience to improve access and flexibility to meet demand in the tourism transport environment
- **Develop a skilled tourism workforce to better service the visitor economy**

⁶ Jobs Skills, 2017, Queensland Tourism Workforce Plan 2017-20

⁷ Tourism Research Australia and Deloitte Access Economics, 2015 *Australian Tourism Labour Force Report: 2015-2020*,

- Integrate national and state tourism plans into regional development and local government planning to generate effective infrastructure to service regional communities, services to the visitors and encourage private investment in tourism infrastructure
- Identify partnerships, efficiencies and opportunities to increase marketing spend to drive demand for travel to Australia and improve conversion.

STATE TOURISM INITIATIVES

The Queensland Government and the Queensland tourism industry share an ambition to restore Queensland's leadership position as Australia's premier tourism state. The former government supported a **goal of doubling visitor expenditure, to \$30 billion by 2020**, in line with Commonwealth ambitions. The current Queensland Government has committed to maintaining these goals and to continue working with industry leaders to develop a prosperous and sustainable tourism industry. QTIC remains committed to working with government and industry to achieve training and employment outcomes through the following strategies:

Advancing Tourism

Advancing Tourism 2016–20 is the Queensland Government's plan to capitalise on the significant tourism growth in Queensland. It targets key areas, identified by industry, to increase market share and boost tourism jobs.

Queensland Tourism Workforce Plan 2017-20 - Jobs Queensland

The *Queensland Tourism Workforce Plan* explores opportunities to address workforce challenges felt by the tourism and hospitality industry. With an ageing population, rapid changes in technology and competition from other industries, attracting, training and retaining committed and skilled people in tourism, hospitality and events is a critical issue.

The plan states, "*While only comprising 6% of the tourism workforce, industry stakeholders report that overseas workers can make a significant difference to a business' ability to serve their visitor markets during seasonal peaks. The projected industry growth will place pressure on the ability of the labour market to meet demand. By 2020, around 20,000 additional skilled and unskilled tourism workers will be needed in Queensland. The extent of the shortfall will depend on how many can be filled within the existing labour supply*".

RESPONSE TO THE TERMS OF REFERENCE

The incidence of wage theft in Queensland, with reference to evidence of wage theft from other parts of Australia

Wage theft in Queensland, and Australia, is not a new issue. Australia's industrial tribunals have for many years dealt with claims of underpayment against employers. However, the recent proliferation of wage theft is occurring across a diverse spread of occupations and business models. Research indicates that it appears to be spreading through systematic adoption⁸.

Research indicates that the highest prevalence of wage theft comes from temporary migrants who often tolerate the situation⁹. In regard to prevalence across industries, a recently conducted survey among migrant workers highlights two in five participants (38%) indicate that their lowest paid job was in food services as waiters, kitchen hands or food servers. This was a far greater proportion than for any other industry, with around one in ten participants working in professional services (11%), horticulture (as vegetable or fruit pickers or packers or farm workers) (9%), cleaning (9%), or retail (as shop assistants or in sales) (8%), and a smaller proportion across a range of other industries¹⁰.

From the same research it is noted that within the food services industry over a quarter of temporary migrants (28%) earned \$12 per hour or less, and half (49%) earned \$15 per hour or less. Among fruit and vegetable pickers, packers and farm workers, almost one in seven participants (15%) earned \$5 per hour or less and almost a third (31%) earned \$10 per hour or less¹⁰.

The impact of wage theft on workers, families, law-abiding businesses, the economy, and community

Wage theft is often portrayed in the media as an issue relating to the tourism and hospitality industry, or among temporary foreign workers. This damages the industry's reputation and Australia's global competitiveness as a place to live and work. According to the *Travel and Tourism Competitiveness Index, 2017*, Australia ranks 29th out of 136 nations in the category of human resources and labour market. Pay and productivity ranks 26th globally indicating negative perceptions around Australia's labour practices and negatively impacting the competitiveness of Australia which ranks 7th overall.

As well as global reputational damage, instances of wage theft also reduces the attractiveness of industry from a labour market perspective. Unfair pay and working conditions negatively

⁸ Thornthwaite L. The living wage crisis in Australian industrial relations. 2017. *Labour & Industry: a journal of the social and economic relations of work*. vol: 27 (4) pp: 261-269

⁹ Clibborn, S., & Wright, C., Employer theft of temporary migrant workers' wages in Australia: Why has the state failed to act? *The Economic and Labour Relations Review*. 2018 vol: 29 (2) pp: 207-227

¹⁰ Berg, L and Farbenblum, B. WAGE THEFT IN AUSTRALIA - Findings of the National Temporary Migrant Work Survey. November 2017.

influence the perception of career opportunities in the industry and the potential to engage in the hospitality industry as a long-term career opportunity. As an industry with an implied shortage of 10,388 workers in 2015 and with a forecast for an accumulated demand of 23,481 tourism workers by 2020, any perception of negative aspects of the industry will hinder the growth of industry and the ability to meet these workforce needs.

For businesses that are complying to awards and appropriate workforce conditions, this behaviour tars the reputation of an industry and creates additional burden through compliance requirements. For those already challenged in the recruitment process, the reputation damage to an industry seen as dishonest and not paying fairly creates additional barriers to recruitment of staff. It undermines the integrity of the industry and consequently makes it challenging to deliver exceptional experiences to consumers. Those working honestly within the industry must then work to stabilise the image of the industry and address the reputational damage, a process that is slow and challenging for operators.

The various forms that wage theft can take, including through unpaid super, the misuse of ABNs and sham contracting arrangements

A combination of anecdotal evidence and academic research¹¹ offers insight into some forms of wage theft that may occur within the tourism and hospitality industry:

- **Cash in hand** - paying cash for services rendered, no payment to superannuation or taxes paid on the wages.
- **Underpayment** – paying employees a rate below the minimum wage.
- **Unpaid trials** – getting candidates to perform unpaid trials over shifts with no intention of hiring.
- **Scam contracts** - developing contracts with apprentices that lock them in to high hours based on an apprentice wage.
- **Sham contracting** (also known as disguised employment and false self-employment)
 - refers to arrangements where workers have employment-like characteristics, but are nonetheless engaged as independent contractors, thus lacking the entitlements of 'employees'.
- **"All inclusive wages"** – providing "benefits" rather than appropriate wages, for example including high cost rent or the opportunity to work with high profile chefs, are counted as part of the remuneration package.
- **Digital/App job platforms** - digital job auction platforms the job seeker pays for the work (typically 15% of the rate charged) not the job provider, and job seekers cannot specify an hourly rate but, rather, must quote a rate for completion of the job which may magnify the prospects of their real wage falling below legal minimum.
- **Rogue labour hire agencies** and related arrangements which frequently engage in breaches of awards and other regulatory requirements.

¹¹ Oliver, D., P. McDonald, A. Stewart, and A. Hewitt. "Unpaid Work Experience in Australia Prevalence, Nature and Impact." 2016. Report to the Commonwealth Department of Employment, Canberra, December.

- **Unpaid work experience and internships** - internships are an increasingly common in tertiary education programs, a small minority of businesses are exploiting those in these roles placing unrealistic demands and expectations on workers.

The reasons why wage theft is occurring, including whether it has become part of the business model for some organisations

It is important to emphasise that wage theft in Australia is not a new notion. Researchers Goodwin and Maconachie argue that unpaid wages recovered in Australia was \$0.4–\$6.9 million per year from 1972 to 1996 and that there was evidence of 'significant, and sustained' employer non-compliance (p. 542)¹². Regarding management strategies, they attest, "*the use of a policy of prosecution as a last resort has provided little incentive for employer compliance. Weak persuasive compliance strategies with rare prosecutions, combined with low levels of penalties if prosecuted and found guilty have provided no deterrence. The combination of complaints-based inspection strategies with these prosecution policies effect*".

A series of government inquiries over the past decade provide evidence that wage theft has become much more widespread⁸. The wage theft is most prevalent in low-wage, low-skill jobs in industries such as retail, hospitality and horticulture and in industries that have specific structural characteristics, such as weak or absent unions, extensive casual employment and subcontracting, intense commercial competition, labour cost minimisation as a dominant business strategy, and other features associated with poor job quality⁹.

Specifically, within the hospitality industry for a minority of small to medium businesses, cash-in-hand payments have become a part of the business model. This could be due to various reasons including a lack of understanding, a perceived notion that compliance is more time consuming, a lack of human resource management procedures or a path dependency whereby a cash culture is deeply ingrained within the company.

It is important to note that some forms of wage theft are not supply driven. Research conducted by Restaurant and Catering Australia also identifies that in many cases, cash in hand payments are instigated on request of the employee. In a survey conducted by the group, the results indicated that approximately one quarter (26.9%) of hospitality sector businesses had their staff members request cash-in-hand payments at some point in time¹³. These requests are often made to avoid personal taxation or the loss of Centrelink payments or other government benefits. Less common reasons also include requesting cash payments due to visa restrictions or to get access to wages quicker.

Furthermore, it is also important that a distinction is made between those businesses that are deliberately non-compliant over a significant time and those who make genuine mistakes and

¹² Goodwin M Maconachie G. Unpaid Entitlement Recovery in the Federal Industrial Relations System: Strategy and Outcomes 1952–95. 2007. 49(4). 523–544.

¹³ Restaurant and Catering Australia. Black Economy Taskforce Interim Report. July 2017.

oversights that are often immediately addressed and corrected when discovered. For some, the complexities of the workplace relations system relating to the Awards system mean accidental errors are not implausible. Examining ways to simplify these systems would strengthen businesses abilities to comply and is likely to reduce accidental wage theft.

Whether wage theft is more likely to occur in particular industries, occupations, or parts of the state or among particular cohorts of workers

Industries that are characterised by strong downward price pressures are highly susceptible to wage theft - industries such as horticulture and hospitality¹⁴. When examining the reporting of wage theft in the media, often the hospitality industry is seen as one of the main perpetrators. Within the past five years high profile chefs such as George Calombaris, Shannon Bennett and Darren Purchase have all been accused of varying levels of wage theft thereby solidifying a negative perception about the hospitality industry.

The nature of the tourism and hospitality industry, reliant on casual employees often from diverse backgrounds and transient in nature make this behaviour appear more prevalent within the industry. Researchers identify that migrant workers might be particularly vulnerable to underpayment as the labour is often low-paid and lower-skilled work⁹.

Temporary migrants including working holiday visa holders, become more vulnerable due to limited rights and employment opportunities and visa rules that 'institutionalise' dependence on employers. Visa rules can constrain the mobility of migrants to switch employers or require migrants to gain employer verification to extend their residency rights, creating dependency⁹.

Box 2: Media reporting of non-compliance

A blitz by Australia's Fair Work Ombudsman on three of Australia's most popular food precincts has resulted in a whopping \$471,904 in recovered wages for over 600 workers.

Investigations at 243 businesses on Melbourne's Victoria Street, Glebe Point Road in Sydney, and Fortitude Valley in Brisbane revealed that 72% of the businesses investigated had breached workplace law. Further breaking down the precincts, the FWO found that businesses at Victoria Street were more likely to be non-compliant at a rate of 80%, and businesses at Fortitude Valley had the lowest rate of non-compliance at 60%. Seventy-one on-the-spot fines were issued, and 63 caution notices were also issued to businesses in the areas¹⁵.

¹⁴ Kaine, S., Josserand, E., & Boersma, M. How to stop businesses stealing from their employees. The Conversation. 8 September 2017.

¹⁵ Dominic Powell, Smartcompany.com.au Thursday, July 12, 2018

The effectiveness of the current regulatory framework at state and federal level in dealing with wage theft and supporting affected workers

It is noted that existing enforcement mechanisms are severely limited and ineffective. Bodies such as the *Fair Work Ombudsman* are under-resourced, have limited power to compel employer cooperation with inquiries, and face the prospect of phoenix activity, with employers liquidating when an inquiry starts, and then starting up again under a new name. For workers, the road to justice is limited by the time it takes, often shoddy employment records and, for migrants, the vulnerability to deportation¹⁶.

Some positive shifts are being identified in industry, not through formal regulatory frameworks but through informal movements. Whilst the number of employees in Unions is on the decline, "people power" is increasing through the use of social media. There are numerous social media groups emerging across the industry where employees name and shame employers that are underpaying or committing other forms of wage theft. This movement means that employees are becoming less willing to accept wage theft and are becoming more vocal against employers that are not providing fair work conditions. This in turn is also stimulating more ethical employment processes among smaller firms that do not wish for reputational damage. Whilst this addresses some of the issues identified, appropriately resourced regulatory frameworks would assist in expediting this change.

Furthermore, there is opportunity for the State Government to work in partnership with industry to showcase positive working environments and benefits of operating and working within compliant businesses. A specific target for such communication from a demand-side would be those with high touch-points among migrant labour pools such as education providers and immigration services. From a supply-side, communications should target sectors of the industry identified as higher risk for wage theft.

Options for ensuring wage theft is eradicated, including consideration of regulatory and other measures either implemented or proposed in other jurisdictions interstate, nationally or internationally and the role of industrial organisations, including unions and employer registered bodies in addressing and preventing wage theft

It is essential that regulatory agencies work with industry and relevant industry bodies to support and encourage compliance through positive enforcement and best practice promotion.

There is support for investigative tools like stakeouts, new methods of reconstructing payrolls, interviewing workers as methods to contribute to enhanced enforcement capacities. These studies are important where employer records are incomplete or non-existent. With more

¹⁶ Thornthwaite, L. Australia's Wage Theft Crisis. Advocate: Journal of the National Tertiary Education Union. 2017. 24. 1. 28-29

social media highlighting non-compliance there are opportunities to utilise these conversations as a basis for where further investigation should be focused.

The value of strategic communication should be considered complementary to a robust enforcement approach and highly developed methods of outreach. For deterrence programs to have an effect on thousands of employers that agencies do not have adequate resources to directly investigate, communications is one of the most important mechanisms for amplifying enforcement impact¹⁷. Creating a culture where there is an understanding of requirements and more importantly where there are demonstrated consequences for non-compliance is integral to making change. Communication also needs to be provided to employees, ensuring basic work rights are understood. Migrants are identified as high-risk groups for wage theft, it is therefore important that communication reaches them through appropriate channels to build awareness around legal working conditions in Australia. Opportunities for this include links with education providers, migration services and on visa acceptance. Communication should include not only what legal entitlements are but also the grievance process if individuals have been subject to wage theft.

The effective enforcements of laws, including industrial, migration and corporate law, is essential to protecting workers against wage theft. This should be supported by increased resources for enforcement bodies and stronger sanctions that can make illegal wage practices an unattractive choice, even for the most powerful operators¹⁶.

RECOMMENDATIONS

Based on the analysis conducted, the existing research into wage theft and the current state of the industry, the following recommendations are put to the Queensland Government:

- Monitoring of Facebook sites to identify employers that are not compliant
- Working with Universities, migration services and training providers to provide suitable communication regarding reasonable working hours, minimum wages and other HR legislation
- Partnering with industry to promote case-studies of best practice and positive outcomes of operating within legislative requirements
- Tightening legislation and increase penalties surrounding non-compliance.

¹⁷ Weil, D. Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change. *Journal of Industrial Relations*. 2018. 60 (3) 437-460.

FURTHER ENQUIRIES

QTIC welcomes the opportunity for further discussion regarding the points raised in this submission. For all enquiries, please contact QTIC Policy Team on ([REDACTED] or email [REDACTED]