

30th July 2018

Submission to the Inquiry in Wage Theft Queensland

To Committee Secretary

Education, Employment and Small Business

Parliament House George Street

Brisbane QLD 4000

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From Executive Security Group Pty Ltd

Introduction

1. Executive Security Group Pty Ltd (the company) is a small Business security provider operating in South East Queensland employing 20 security officers.

2. The Company has been operating for around 20 years and it has been increasingly more difficult to survive in recent years with the unfair work system.

3. The company has made countless complaints to the Queensland Office of Fair Trading, The Fair Work Ombudsman, both State and Federal Industrial Ministers and the Security Associations, explaining the discrimination against security companies that pay by the Security Services industry Award 2010 [MA000016] compared to other methods.

4. Correspondence to/from the Office of fair Trading

5. It would be difficult to express my frustration of dealing with the Office of Fair Trading (OFT) for twenty years.

6. Both employers and employees are greatly affected by the **wage theft** and the black economy.

7. I will explain below the issues that are effecting both employers and employees with a few case studies throughout this submission using the Contract Security industry as an example.

8. Executive Security Group Pty Ltd (ESG) has made numerous submissions/complaints to both Federal and State Members of Parliaments (including Ministers), the Fair Work Ombudsman and the Queensland Office of Fair Trading, to the issues of employers using ABN holders, out of date Enterprising Agreements, dodgy Individual Flexibility Arrangements, phoenix of companies and other practises of not meeting their obligations to pay correctly and their tax obligations from 1997.

Terms of Reference,

The Contract Security Industry

The Contracting Industry (I will use the Security Industry as an example), in Queensland, security is governed by a number of Government Agencies, both state and federally and these will be commented on throughout this Submission.

A. *the incidence of wage theft in Queensland, with reference also evidence of wage theft from other parts of Australia.*

63% of councils and security companies failed the recent fair work procurement Audit.

Nearly every Government contract has wage theft or supply chain theft!

Government stadium security using expired EBA, to gain commercial gain over others!

Security Companies that have been Prosecuted/fined/for under payment of wages against them

VIP Security 2018 FWO v VIP Security Federal Circuit Court fined \$115,668.00 [2018] FCCA 1969

VIP Securities International Pty Ltd under investigation [2018] FCCA 1969

Step Ahead Security 2016, Fined a total of \$308,000 2016 underpayment of wages in the Federal Court [2016] FCCA 1482

Spartan Security Group 2015 Fined \$90,000 (Federal Court Brisbane) for under payment of wages

RPQ Security 2014 Penalised \$67,000 by the Federal Court \$67,000.

Bundaberg Security Pty Ltd 2013 Underpaid Security Officer fined \$51K

Sureguard Underpaid Security Officer fined \$81,270, \$200,000 back paid.

There are a number of other Security Companies that have under paid security officers that have been settled out court, however the above are the higher underpayments.

There are many other companies that are being/have been prosecuted by the Fair Work Ombudsman in the Federal Circuit Courts throughout Australia. However it is extremely difficult for an employee to seek and recover underpayment of wages.

B. *the impact of wage theft on workers, families and law abiding business the economy and the community*

B.1 The impact of wage theft on my business and my personal health has had a devastating impact on me, my company and the employees through unfair tendering.

B.2 ESG has tendered for many contracts to only be rejected by clients (including Government clients) who want the cheapest rate and are not worried what the Security Companies pay their employees or the quality of the security officers provided.

B.3 For example I lost a major contract solely on my tender price, whereas a major multinational Security Company won the contract only to have them outsource to a company that employ individual sub-contract staff required to hold their own Australian Business Number (ABN).

B.4 This had an effect on the employees as they were either rejected, or **had to accept a lower rate of pay for employment with the new contractor.**

B.5 Another effect on employees, they are now on ABN or Casual they are more than likely not to be able to get a loan for a house or a loan for a reliable car to get to work.

C. *the various forms that wage theft can take, including through unpaid super the misuse of ABNs and sham contracting*

C.1 I have encountered many forms of **wage theft**, including, misclassification of employees to downright robbery.

C.2 Most ABN employees in the security industry are misclassified as independent contractors, when in fact they are direct employees of the company.

The employee below worked at this 24/7 site permanently.

Case study 1. ABN Security company 2015/2016

ABN Security.

ABN Security company subs to multi-national at numerous site.

ABN Security company employs Security officers with ABN Holders to work for a Flat rate of pay which is below the Award.

ABN Security company Week days per hour \$21.01, Weekends \$25.11 Public Holiday Rates \$41.07

Award Casuals rates per Hour \$24.86, Saturday \$34.81, Sunday \$44.75 and Public Holiday \$54.70, Night \$29.16.

Weekdays 30 hours @\$630.30, Day Rate, Weekends at \$502.20 total \$1,132.50

The Award 30 Hours Day rate @ \$745.80, Saturday, \$348.10, Sunday, \$447.50, total \$1,541.40.

Another case study where employees are disadvantaged.

C. Case Study 2. Company (A) that tended for the **Big Pineapple Music Festival 2018** on the Queensland Sunshine Coast, contracted the Security Company, only for that company to sub it out to another company (B) at a charge rate of \$30.50.

C.1 The Company A had a 2008 Collective Agreement, however choose for whatever reason to sublet it to Company B.

C.2 Company B Charge rate was \$30.50 per hour; this rate is well below the Award rate therefore the employees would have been underpaid by the Award rate.

C.3 The Site had several liquor outlets therefore the Crowd Controllers would have been level 2 under the Award, the Award rate Casual \$38.27 per hour.

C.4 there were **22 Crowd Controllers** on the above site that Saturday working from 9 hours to 13 hours.

C.5 A Crowd Controller worked 13 hours and the **charge rate** from company to company B was \$396.50. The Award rate for Saturday is \$38.27 for the first 8 hours than overtime at \$43.74 thereafter.

C.6 The Wage for the employee for 13 hours on a Saturday is \$532.70 yet the employer only charged the contractor **A** \$396.50, it's anybody guess what the actual employee was paid

Companies misusing Individual Flexible Arrangement (IFA) from the Award clause 7.

Case Study 3

C7. A Queensland Security Company that has at least 250 employees, employs their employees using an Individual Flexibility Agreement (IFA) at the point of engagement, which does not meet the requirements of the Fair Work Act 2009.

C8. The understanding is an IFA cannot be offered to a new employee under the FWA.

C9. The Employee is employed as a casual in 2017 at level 1 with the flat rate at \$26.00 per hour for all hours worked, when in fact the wage rate for a level 1 2017/2018 was \$25.68 plus penalties rates and over time, no flat rate.

C10. This IFA does not pass the Better off Overall Test (BOOT).

C.7 The **Modern Award** discriminates against the employers who are using the Modern Award as their Industrial instrument

The **Fair Work Act 2009** discriminates against the employers who are using the Modern Award as their Industrial instrument.

1. The issues are many, and while the Labor Party and the present Liberal party had done nothing to fix the **Australian Fair Work Act 2009** to make it fair and equal for all employers to tender for contracts as equals, I believe that there is a need to develop a more robust system to crack down people who evade tax and their obligations to the labour industry.

2. There are three issues that need to be addressed and I will deal with each one separately.

ABN Holders

3. The Security industry is plagued with ABN holders and this is putting economic stress on the security companies that do the right thing and pay their employees under the Modern Award, *Security Services Industry Award 2010 (the Award)*.

4. ABN workers don't get paid their full entitlements, penalties for weekends, public holidays, afternoon or night shifts and are prone to wage theft.

5. Employers who use ABN Holders, don't have to pay workers compensation, superannuation guarantee levy, pay roll tax (in certain circumstances) and other expenses.

6. While in some cases the Fair Work Ombudsman have been able to prove that the ABN workers are in fact employees, the vast majority goes unpunished.

7. ABN employers – there is a growth in the number of Security Companies using ABN contractors, this gives these companies a **huge commercial advantage** over employers paying under the Modern Award.

8. Phoenix is another way to get around paying an employee, by having several companies where one company goes broke you just change your clients over to the other company and the employees don't get paid.

9. An example of this could be a Gold Coast Security company had two companies with the same directors and goes into liquidation April 2018, and the other company carries on as usual, the employees from the first company do not get paid. **[2018] FCCA 1969**

The FWO has had Director before the Federal Circuit Court in 2018. **[2018] 19969**

Pre-2010 Enterprise Agreements

10. Pre-2010 Enterprise Agreements disadvantage employers and employees that has to use the Modern Award as their employment instrument.

11. This has caused the workforce in Australia into a **two-class industrial system**, one employer who gets the benefits of a cheaper wage rate to tender for contracts and one who must tender by the Modern Award that has a larger charge rate, therefore not in the running to gain the tender.

Wage theft is just greed or desperation by the employer.

D.2 Desperation by the employer is mainly caused by not winning tenders because the greed of other people, for example any security company that pays their employee by the Modern Award finds it extremely difficult to get contracts.

D.3 It is not only the security companies to look at in the main, it's **the clients** who wants the cheapest rate, and this is a particular problem in the Crowd Control industry.

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

Failed all round to do anything about wage theft.

Wage theft is out of control when you look at corporate Australia, 7-11, dominos, they are all doing it!

Fines are too soft!

F.1 The Fair Work Ombudsman is pretty much useless when an employee asks them for assistance in underpayment of wages. Example, an employee ask the FWO for assistance in recovering of an underpayment of wages, the process is this;

1. Send a form seeking assistance from the FWO
2. Have a mediation with an FWO Conciliator
3. Mediation fails.
4. FWO wipes their hands, employee needs to argue their case in the Federal Circuit Court.
5. Appear at the Court for a hearing date.
6. Go to another Mediation Conference, mediation conference fails.
7. Go to a hearing before a Federal Registrar.
8. Registrar issues an order.
9. Employer challenges the order.
10. The employee has to get a lawyer.
11. Go before a Federal judge.
12. Judge issues an order for the employee be paid.
13. The Employer goes into liquidation, after 12 months, the employee is out of pocket by many thousand dollars and still hasn't received his underpayment. The Fair Work act is designed for the employee to fail in receiving his/her underpayment.

F.2 To end an expired EBA / zombie agreement is near impossible for an employee.

**F.3 The Office of Fair Trading who regulates the security industry
Ineffective to stop wage theft!**

1. The Office of Fair Trading (OFT) regulates the security industry in Queensland through a number of Acts, the Security Providers Act 1993 (current as at 1st March 2017) and the Security Providers (Firm Code of Practice) Regulations 2008, and the Office Liquor, Gaming and Regulation Licence, including working with other agencies including State and Federal.
2. I have been corresponding and meeting with the OFT since 2014 to try and have the OFT to be more aggressive in their approach to the problems of employers both Clients and Security companies paying security officers below the Award rates, sham contracting and incorrectly using the Individual flexibility agreements from the Award.
3. I believe the OFT inspectors do have the power to ask security officers when checking the security officers licence if they are being paid correctly.
4. I received a response from [REDACTED] of the OFT on the 13th of April 2015 into a complaint about sham contracting where they would investigate however very little came from it.

5. In response to my letter 11th April 2016 the OFT replied on the 29th April 2016 advise that the OFT Paragraph 4 “*If a licensee is found by the FWO to be in contravention of the Fair Work Act 2009, the OFT will **consider** the cancellation or **suspension** of its licence*”. **Letter attachment 1**

6. In numerous of e-mail replies from the OFT, it has always maintained that sham contracting, underpayment and unconsumable practices in tendering for contracts is the responsibilities of the Fair Work Ombudsman.

7. Security Buzz October 2014 page 4 **Audit process for Security firms. attachment 2**

7.a To ensure compliance with the code set out by the Security Provider Regulation 2008, an approved security industry association must conduct a compliance audit of each of their member’s security firm at least every 3 years.

7.b Compliance must be done by an Accountant and;

Assess a member’s compliance with the Regulators code of conduct provisions

State whether the auditor believes the member is complying with the code of conduct

Be conducted in compliance with the auditing and assurance standards made by the auditing and the Assurance Standards Board.

8. If these audits were carried out as above there may be a lot less **wage theft** in the security industry.

9 Security Firm Code of Practice 2008

9.a 3. Objectives of code

This code sets standards of conduct for a relevant security firm for carrying out the relevant security firm’s functions in a way that promotes

(a) consumer and community confidence: and

(b) The safety of the community and particular persons engaged by the relevant security firm; and

(c) ethical and professional conduct

10 Wage theft is not ethical or professional!

Reference

2007 work place right ombudsman’s report Don Brown – “Race to the bottom”

2017 inquiry into corporate avoidance of the fair work act! United Voice

2017 inquiry into the procurement of security services by local Governments.

(G) RECOMMENDATIONS

1. Criminal charges, deregistration of company

2. The Queensland Industrial/OFT Inspectors be given the powers to do time and wages inspections on all contractors that win Queensland Government Contracts to prevent **wage theft**.

3. Any contractor that is found under paying their employees, their contract is terminated.

4. The Office of Fair Trading given more power to combat **wage theft** within the Security Industry.

5. No ABN contracting, holders be required to get a security firm licence and full insurance.

6. The Queensland Government issues a statute to all Department, sub Departments and others that only Security Firms that pay their employee by a Modern Award or an Enterprise Agreement that passes the Better of Overall test shall be considered for tenders and consideration for a contract, to combat **wage theft**.

7. Licence paper work from OFT for a firm's licence has to have a stat declaration of the minimum payment of the award hourly rates.
8. QLD Government tenders have the same stat declaration in them to pay the award as minimum.
9. More education from ASIC when you start a company.
10. More education from OFT on obligations of a firm Licence holder.
11. More education and people on the ground for FWO.

Conclusion

I thank the Queensland Parliament for the opportunity to have an input into the Wage Theft Queensland inquiry. I would also like to request if allowable to tell my story before the Parliamentary Committee of how wage theft has affected Executive Security Group; staff, myself and the company.

Yours Sincerely

Andrew JP Bourke