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LAWYERS
FOR
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Committee Secretary
Education, Employment and Small Business Committee
Parliament House
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Dear Secretary

Inquiry into wage theft in Queensland

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to provide this submission in relation to the Education, Employment and Small Business Committee inquiry into the problem of wage theft in Queensland. ALHR supports the timely inquiry into wage theft in Queensland which will assist with the collection of evidence in relation to the incidence and impact of wage theft in Queensland, as well as assist the Queensland Government to take account of recommendations from key stakeholders in regards to regulatory or legislative reforms which may assist to prevent or reduce further exploitation of workers.

Terms of Reference

ALHR understands that the Education, Employment and Small Business Committee is to conduct an inquiry into and report on:

- a) the incidence of wage theft in Queensland, with reference also to evidence of wage theft from other parts of Australia;

- b) the impact of wage theft on workers, families, law-abiding businesses, the economy and community;
- c) the various forms that wage theft can take, including through unpaid super, the misuse of ABNs and sham contracting arrangements;
- d) the reasons why wage theft is occurring, including whether it has become part of the business model for some organisations;
- e) whether wage theft is more likely to occur in particular industries, occupations or parts of the state or among particular cohorts of workers;
- f) the effectiveness of the current regulatory framework at state and federal level in dealing with wage theft and supporting affected workers; and
- g) 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.

1. Summary

ALHR commends the Legislative Assembly's decision to call for an inquiry into the incidence of wage theft in Queensland which will aid to reveal the extent and impact of labour exploitation in Queensland and Australia at large. ALHR urges the Queensland Government to implement necessary reforms to reduce the incidence of wage theft and to consider current barriers which prevent victims from accessing the court system and relevant agencies.

The Queensland Government must comply with its international legal obligations and accordingly ensure that citizens have access to just and favourable conditions of work. This includes the need for proactive action to protect vulnerable people from discrimination, particularly temporary migrants and people with disabilities who are often at a much greater risk of exploitation in the workplace.

ALHR recommends that:

1. The Queensland Government introduces a State-based regulatory authority which is based on a similar model to the Fair Work Ombudsman which would be responsible for assisting to educate, provide support to complainants, persuade compliance, and be equipped to investigate contraventions and take enforcement action as necessary.
2. A strengthened regime of penalties to deter contraventions is introduced, including criminal prosecution where appropriate.
3. Alternative dispute resolution mechanisms are made available when necessary which minimise the barriers to parties achieving resolution.
4. Businesses are required to report on their supply chain including the organisation's policies in relation to modern slavery, the parts of its business and supply chains where there is a risk of modern slavery taking place, the steps it has taken to assess and manage that risk, and other actions as outlined below.

5. The Queensland Government introduces a Queensland Human Rights Act or Bill of Rights, which would assist in cases of discrimination and labour exploitation.

2. The nature and extent of wage theft in Queensland

Wage theft is endemic among international students, backpackers and other temporary migrants in Australia, including in Queensland.¹ As such it is a core business and human rights concern. Ensuring access to secure employment and an adequate and reliable income is fundamental to the enjoyment of many of the fundamental human rights that Australia is obliged to uphold. It is also particularly important in protecting people from other vulnerabilities, such as safeguarding them from homelessness and ensuring access to adequate healthcare.

Wage theft is a form of labour exploitation which in turn is a form of modern slavery. A recent Federal Parliament inquiry into establishing a Modern Slavery Act in Australia (**the Federal Inquiry**) recommended in its *Hidden in Plain Sight* report that the proposed Modern Slavery Act should, *inter alia*, include offences relating to labour exploitation.²

Wage theft includes conduct which denies employees receiving the wage they are legally entitled to and can include:

- An employer not paying the minimum wage;
- An employer not paying an employee;
- An employer not paying penalty rates, for work overtime, or for all hours worked;
- An employer not paying superannuation entitlements;
- The misclassification of workers (for example, engaged as an independent contractor instead of an employee); and
- The use of sham contracting arrangements.

It can also be seen, as in the 7-11 example, in the form of 'cash back' schemes, where employers make the appropriate payments, but then require the worker to pay a proportion of that back to the employer in cash. Approximately 4% of temporary migrant workers are subjected to exploitation in this form.³

¹ Laurie Berg and Bassina Farbenblum, Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey, University of NSW, November 2017, <http://apo.org.au/system/files/120406/apo-nid120406-483146.pdf> (accessed 22 November 2017). See also: 'Backpackers, international students suffer widespread wage theft, report finds', UNSW Newsroom, 21 November 2017, <https://newsroom.unsw.edu.au/news/businesslaw/backpackers-international-students-suffer-widespread-wage-theft-report-finds> (accessed 22 November 2017).

² Recommendation 1, *Hidden in Plain Sight*, Federal Parliament inquiry into establishing a Modern Slavery Act in Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017, http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf.

³ Laurie Berg and Bassina Farbenblum, 'Wage Theft in Australia' (Findings of the National Temporary Migrant Work Survey, Migrant Worker Justice Initiative, 2017) 45.

ALHR acknowledges that victims of wage theft come from a multitude of social, cultural, and racial backgrounds, however ALHR notes the prevalence of wage theft incidents which disproportionately affect vulnerable people, including those with disabilities or with culturally or linguistically diverse backgrounds.

The 2017 report '*Wage Theft in Australia - Findings of the National Temporary Migrant Work Survey*', drew on the findings of "The National Temporary Migrant Work Survey" (**the Survey**) which sought responses from 4,322 temporary migrants across 107 nationalities who were currently working or had worked in a range of jobs in various Australian states and territories.⁴ Participants included migrants, international students and working holiday visa holders. The survey alarmingly found that almost 30% of survey participants earned \$12 per hour or less nationwide, which is approximately half the minimum wage for a casual employee in many of the jobs in which temporary migrants work.⁵ In Queensland, the report found that Queensland participants identified their lowest paid job to include work undertaken as retail assistants, farm workers, or cleaners.⁶

Workers from Asian countries, including China, Taiwan and Vietnam, receive lower wage rates than those from North America, Ireland and the UK. Chinese workers are also more likely to be paid in cash.⁷ Temporary migrant workers are significantly disadvantaged due to the inequality of bargaining power between employers and employees, especially as many migrant workers are vulnerable due to language difficulties, fear of losing their visa and being deported, and not being aware of their legal rights.

It is suggested that up to half of temporary migrant workers are paid less than \$15 per hour, with the hospitality and agriculture industries being among the lowest-paid.⁸ This is clearly evidenced by the surveys findings that fruit and vegetable picking and farm work were the worst paid sector with one in seven people earning \$5 per hour or less, and almost 31% earning \$10 per hour or less.⁹

The survey also found that even when workers did know about the minimum wage, they could not demand this entitlement whilst on their visa.¹⁰ This highlights the extreme vulnerability that temporary migrant workers face in their employment. They are disempowered and have no voice, and often have no ability to enforce their legal rights.

The survey highlights the urgent need for comprehensive measures at both a federal and state level in order to address large scale non-compliance by a number of employers in Australia, and to consider what safeguards can be implemented to reduce wage theft, especially in respect of temporary migrants.

⁴ Ibid, 5.

⁵ Ibid.

⁶ Ibid, 51.

⁷ Ibid

⁸ Ibid, 5.

⁹ Ibid, 6

¹⁰ Ibid, 6.

ALHR urges the Queensland Government to take action to reduce wage theft, and to ensure that businesses at each level of their supply chains demonstrate due diligence and adhere to the principles, standards and laws governing labour in Australia.

Further, businesses should be required to report on their supply chain (which includes their workforce) as recommended in the *Hidden in Plain Sight* report. The reporting should include “the organisation’s structure, its business and its supply chains; its policies in relation to modern slavery; its due diligence and remediation processes in relation to modern slavery in its business and supply chains; the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk; its effectiveness in ensuring that modern slavery is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; the training about modern slavery available to its management and staff; and any other actions taken”.¹¹

3. Relevant international legal obligations

As stated above, employment represents a core human rights concern. Australia has agreed to be bound by the seven core international human rights treaties and Queensland must therefore comply with these international legal obligations.

The obligation to respect, protect and fulfil the labour rights of all workers is enshrined in international human rights laws to which Australia has ratified and it dutifully bound to uphold.

International human rights laws

Article 23 of the *Universal Declaration of Human Rights (UDHR)*, which was adopted by the UN General Assembly in December 1948 and was the initial touchstone and compass for human rights, includes an express assertion of the universal right to work and to equitable remuneration. Article 23 provides as follows:

Article 23

1. *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
4. *Everyone has the right to form and to join trade unions for the protection of his interests.*

¹¹ Recommendation 14, *Hidden in Plain Sight*, Federal Parliament inquiry into establishing a Modern Slavery Act in Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017, http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf.

The right to work, which includes the right to just and favourable working conditions, is also expressed in Article 7 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, which provide as follows:

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:

 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;**
- (b) Safe and healthy working conditions;*
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

Article 7 therefore imposes the obligation on all member states to ensure equity in terms of wages and industrial conditions. The UN Committee on Economic, Social and Cultural Rights has highlighted that the right to work safeguards should extend to everybody, including all migrant workers, in line with the principle of non-discrimination.¹²

The UN Committee on Economic, Social and Cultural Rights also recommended: “States parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection. These measures would compel employers to respect labour legislation and declare their employees, thus enabling the latter to enjoy all the rights of workers, in particular those provided for in articles 6, 7 and 8 of the Covenant. These measures must reflect the fact that people living in an informal economy do so for the most part because of the need to survive, rather than as a matter of choice.”¹³

The UN Committee on the Elimination of Racial Discrimination recommended states to “Recognize that, while States parties may refuse to offer jobs to non-citizens without a work permit, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.” In the words of the Inter-American Court of Human Rights: “The State is obliged to respect and ensure the labour human rights of all workers, irrespective of their status as nationals or aliens, and not to tolerate situations of discrimination that prejudice the latter in

¹² Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (Article 6), UN Doc. E/C.12/GC/18, 6 February 2006, para 18.

¹³ Committee on Economic, Social and Cultural Rights, General comment No. 18: The right to work (Article 6), UN Doc. E/C.12/GC/18, 6 February 2006, para 10.

the employment relationships established between individuals (employer-worker). The State should not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum international standards.”¹⁴

Article 11 of the ICESCR recognises that everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. States Parties are obliged to take appropriate steps to ensure the realisation of this right.

International labour standards

Australia is among the founder members of the International Labour Organization (**ILO**) which has maintained and developed a system of international labour standards “aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity”.¹⁵ International labour standards are about the development of people as human beings. In considering wage theft, ALHR recommends that this inquiry ensures that any regulatory framework is in accordance with international labour standards and international human rights laws. The international community has recognised that labour is not a commodity, and as the ILO profoundly state:

...labour is not like an apple or a television set, an inanimate product that can be negotiated for the highest profit or the lowest price. Work is part of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being. Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity. In short, economic development is not undertaken for its own sake but to improve the lives of human beings; international labour standards are there to ensure that it remains focused on improving human life and dignity.¹⁶

People with disabilities

ALHR is particularly concerned about the prevalence of wage theft incidents occurring in relation to people with disabilities. The right of persons with disabilities to work on an equal basis with others is specifically proclaimed for in Article 27 of the Convention on the Rights of People with Disabilities (**UNCRPD**) as follows:

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the

¹⁴ Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, 17 September 2003, para 170.

¹⁵ International Labour Organization website: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>.

¹⁶ International Labour Organization website: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm>

realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;*
- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;*
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;...*

Workers with disabilities have been subjected to wage theft by Australian Disability Enterprises and paid as little as \$2 per hour. It is the view of ALHR that low paid, supported employment of persons with disabilities should be phased out to help workers with disabilities transition into mainstream, inclusive employment and realise a liveable wage. Wage theft against employees with disabilities fails to take into account the full range of the value of their work and offers them a demeaning wage, and as such is exploitative and breaches the fundamental human right to be recognised on an equal basis to others.

Open employment is preferable to supported employment as it allows people with disabilities to engage in the workforce in an equal manner and build their capacity to work. Employees with disabilities gain social and economic benefit from full and equal participation in the open labour market when paid a fair wage for their work. To fully realise this benefit, the remuneration gap between people with disabilities and those without must be addressed and closed. Closing this gap would go some way towards Australia meeting its international obligations under Article 27 of the UNCRPD.

4. Current legislative and regulatory frameworks

While the foregoing examples provide a clear impetus for change, barriers to addressing these issues also exist and must be carefully considered in this inquiry.

4.1 *Fair Work Act 2009 (Cth)* and Fair Work system

The *Fair Work Act 2009 (Cth)* (**Fair Work Act**) and the *Fair Work Regulations 2009 (Cth)* govern “national system” employee-employer relationships in Australia, and were introduced to ensure a safety net of minimum entitlements, enable flexible working arrangements and fairness at work, and prevent discrimination against employees. Under section 13 of the Fair Work Act, a national system employee is defined as a person who is employed by a national system employer, and includes employees in the private sector in Queensland who are employed by constitutional corporations. While it is trite that the Queensland *Industrial Relations Act 2016 (IR*

Act) does apply to public servants in the State of Queensland, it is considered far less likely that wage theft issues are endemic in the public service as they are in some private industries.

The Fair Work system was also created under the Fair Work Act as a national workplace relations system which includes minimum employment laws and agency bodies such as the Fair Work Ombudsman and Fair Work Commission. Therefore in Queensland, the Fair Work Ombudsman and the Fair Work Commission are often the first point of contact for complaints concerning underpayment or other forms of wage theft. The Fair Work Commission acts as the national workplace relations tribunal and was introduced to assist in the resolution of disputes involving employers, employees and unions, and employer associations who are covered by the national workplace relations system. The Fair Work Ombudsman is a statutory office which was created to promote harmonious, productive and cooperative workplace relations and ensure compliance with national workplace laws.

Both the Fair Work Act and the IR Act also make provision for payment of wages, with penalties prescribed for breaches. The application of the Fair Work Act to the majority of workers in Queensland means that issues of constitutional inconsistency will need to be kept at the forefront of any legislative proposal for change.

In circumstances where a dispute relating to workplace relations is not resolved by the Fair Work Commission or the Fair Work Ombudsman, the Federal Circuit Court of Australia has jurisdiction in relation to any civil matter under the Fair Work Act.

ALHR also acknowledges and supports the reforms introduced in the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* (Cth) which includes increased penalties for “serious contraventions” of workplace laws and for breaches of record-keeping and payslip obligations and placed the onus on employers who do not meet those obligations to disprove any allegations of underpayments.

4.2 Effectiveness of Anti-discrimination and Industrial Relations legislation

In Australia, domestic legislation exists to protect human rights including the right to equality and non-discriminatory treatment in the workforce for people with disabilities. At a federal level, the stated objectives of the *Disability Discrimination Act 1992* (Cth) are to eliminate, as far as possible, discrimination against persons on the grounds of disability in the area of work, and to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community. The Fair Work Act incorporates anti-discrimination requirements into workplace law. Queensland has also introduced almost equivalent jurisdiction-specific legislation through the *Anti-Discrimination Act 1991* (Qld) and the IR Act, which aim to protect the rights of vulnerable people to equal treatment in the workplace.

Notwithstanding this, ALHR stresses that there are existing issues with such anti-discrimination laws in Australia as the laws:

- a. are often reactive rather than proactive;

- b. place an unjust onus on the person subjected to discriminatory treatment to bring a legal action against their employer or potential employer which raises significant issues due to the power imbalance that exists between an individual and an employer; and
- c. fail to provide appropriate remedies to compensate an aggrieved party where discrimination is proven.¹⁷

In this regard, ALHR continues to advocate and urge the federal and Queensland Government to implement a Human Rights Acts or Bill of Rights in order to create much-needed legal protection for workers with disabilities.

4.3 Other applicable legislation

Other laws available to workers who are exploited include anti-bullying laws (at both state and federal level) and the *Competition and Consumer Act 2010* (Cth). Existing provisions within the *Criminal Code Act 1899* (Qld) may also be utilised in appropriate cases.

4.4 Impact of Australian Modern Slavery Bill

ALHR has welcomed the introduction of the Modern Slavery Bill (Cth) into Parliament this year. The enactment of such laws will be an important step towards requiring businesses to take responsibility for human rights by recognising, reporting on, and ultimately reducing incidents of modern slavery, which in some circumstance may be linked with incidents of wage theft.

The Bill requires certain large business entities with a consolidated revenue of \$100m or more per year to report annually on the steps they have taken to identify and prevent risks of modern slavery in their supply chains. Around 3,000 companies will be required to report under the proposed legislation, and other entities can report voluntarily.

ALHR recognises the importance of the introduction of such legislation in imposing due diligence obligations on large corporations to undercover unlawful practices which may involve incidents of wage theft.

However, ALHR recognises that incidents of wage theft in Queensland often occur in small businesses and companies which may have no relation to companies which come within the

¹⁷ Well documented in Thornton's still pertinent critique: M. Thornton. *The Liberal Promise: Anti-Discrimination Legislation in Australia*. (Oxford University Press, 1990). This critique has been subsequently affirmed by numerous scholars, including B. Smith and T. Orchiston, 'Domestic violence victims at work: A role for anti-discrimination law?' (2012) 25 *Australian Journal of Labour Law*, 209, 220; Mark Davis, 'Employment Selection Tests and Indirect Discrimination: The American Experience and its Lessons for Australia' (1996) 9 *Australian Journal of Labour Law* 1, 16, 18; Sara Charlesworth and Iain Campbell, 'Right to Request Regulation: Two New Australian Models' (2008) 21, *Australian Journal of Labour Law* 116, 127; Anna Chapman, 'Care Responsibilities and Discrimination in Victoria: The Equal Opportunity Amendment (Family Responsibilities) Act 2008 (Vic)' (2008) 21 *Australian Journal of Labour Law*, 200, 201; Dr Belinda Smith, 'From Wadley to Purvis – How far has Australian anti-discrimination law come in 30 years?' (2008) 21 *Australian Journal of Labour Law* 3; Phillip Tahmindjis, 'Sexual Harassment and Australian Anti-Discrimination Law' (2005) 7 *International Journal of Discrimination and the Law* 87, 104; Peter Handley, 'Caught Between a Rock and a Hard Place': Anti-discrimination Legislation in the Liberal State and the Fate of the Australian Disability Discrimination Act' (2001) 36 *Australian Journal of Political Science* 515.

reporting threshold of the Modern Slavery Bill, and therefore acknowledges that the enactment of such laws will not alone be sufficient to act as a safeguard or assist in prevention and elimination of wage theft in Queensland.

5. Effectiveness of the current regulatory framework at state and federal level in dealing with wage theft

The question which seems to be of central importance regarding wage theft is not so much the issue of a lack of available legal remedies for workers but rather the accessibility of legal recourse for workers. There are significant barriers to access justice for workers, especially migrant workers and workers with disabilities.

ALHR recommends that the State Government consider addressing such barriers in this inquiry. The system currently utilised appears to promote, or at least permit, the attitude that penalties represent part of the cost of doing business. Further, the reactive nature of the system¹⁸ acts as a disincentive for workers to enforce their rights and this can impact negatively on temporary migrant workers, who frequently fear repercussions for their visas.¹⁹

These points are illustrated in the recent Fair Work Ombudsman discrimination prosecution of Yenida Pty Ltd,²⁰ in which the employer was penalised for deliberately underpaying two Malaysia workers of Chinese descent. The Court heard that the couple were underpaid more than \$28,000 and that the director of the company referred to the couple as “family” to put pressure on them to work hard for him because of the Chinese cultural connection they shared. It was also heard that the couple were reluctant to complain about the way they were treated until their permanent residency was confirmed, for fear that it would affect their visas and applications for permanent residency. The court found that the couple were “vulnerable and dependent” on the employment.

It is doubtful whether, without the support of the Fair Work Ombudsman, the workers concerned could have taken action independently, with numerous interacting factors contributing to the difficulty. This case may serve as an illustration of how fear of deportation, language barriers, lack of financial resources and the difficulty in accessing the court system can inhibit access to justice.

Chapter 9 in the *Hidden in Plain Sight* examines specific measures to address labour exploitation, particularly for migrant workers, including changes to Australia’s visa framework and the introduction of a labour hire licensing scheme. Whilst many of these recommendations involve changes to Australia’s visa which is a function of Federal Government, there are recommendations such as a modern slavery hotline which can be implemented at a State level.

¹⁸ Catherine Hemingway, ‘Not Just Work: Ending the Exploitation of Refugee and Migrant Workers’ (Western Community Centre, 2016) 212.

¹⁹ Above n 1, 6.

²⁰ *Fair Work Ombudsman v Yenida Pty Ltd & Anor* [2017] FCCA 229.

6. Options for regulatory or legislative reform to reduce the incidence of wage theft

Whilst ALHR commends the Victorian Government's new proposed laws aimed at curbing wage theft, it is important that resources in Queensland are directed towards improving access to justice and levelling the playing field.

The introduction of a State-based regulatory authority on a similar model to the Fair Work Ombudsman is recommended. Such a regulator would need to be empowered with dual functions and appropriately resourced; on the one hand to educate, provide support to complainants and persuade compliance and on the other to investigate contraventions and take enforcement action as necessary.²¹

An alternative dispute resolution mechanism is also recommended, perhaps through the auspices of the existing arrangements for conciliation by the Queensland Industrial Relations Commission. It is important that any amended or newly introduced arrangement should be structured informally to minimise the barriers to achieving resolution between parties.²² Any dispute resolution agency should also be empowered to make referrals with recommendations for prosecution to the Fair Work Ombudsman.

It is also recommended that consideration is given to a strengthened regime of penalties which will act as a deterrent²³ and utilising the existing legislative regime, including criminal prosecution in appropriate cases, more effectively.

As noted above, businesses should be required to report on their supply chain including the organisation's policies in relation to modern slavery, the parts of its business and supply chains where there is a risk of modern slavery taking place, the steps it has taken to assess and manage that risk, which would assist business to recognise and reduce risks of labour exploitation in their supply chain.

As stated above, ALHR urges the Queensland Government to introduce a Queensland Human Rights Act or Bill of Rights. Such reforms would assist in incidents of labour exploitation and in ensuring that vulnerable people are protected in this regard. Currently human rights in Australia have to be protected by a patchwork of separate anti-discrimination laws, many of which require the victim to bring any legal action against the perpetrator.

²¹ Above n 8, 213.

²² Ibid.

²³ Ibid, 224.

Conclusion

In conclusion, ALHR urges the Queensland Government to recognise the widespread incidence of wage theft in Queensland, and the significant impact of such conduct which is often aggravated in relation to vulnerable people. The Queensland Government should consider introducing an effective State-based regulatory agency to enforce existing laws and promote cooperation with the Fair Work Ombudsman for the prosecution of breaches, as well as introduce a strengthened regime of penalties which will assist to deter contraventions. Alternative dispute resolution mechanisms should also be made available to assist parties to resolve disputes where necessary. Finally, ALHR continues to urge the Queensland Government to take action to introduce a Queensland Human Rights Act or Bill of Rights to ensure protection of people from discrimination in the workplace which will aid to reduce the incidence of wage theft and labour exploitation.

If you would like to discuss any aspect of this submission, please email me at:

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Yours faithfully



Kerry Weste

**President
Australian Lawyers for Human Rights**

ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

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