

Submission for Parliamentary Enquiry into Wages Theft by [REDACTED]
[REDACTED] by [REDACTED]

1. Thank you for the opportunity to provide comment on this very important issue.
2. Please note this issue is currently before the FWO, but following how this matter has been handled by both the employer and FWO and the current Parliamentary Enquiry it is deemed appropriate the committee be aware of matters such as these.
3. The employee that has provided details in this submission has a bill of over \$25000 for assistance in research pertaining to the matter to date, as well as missed opportunities due to the underpayment of wages.
4. The issue of underpayment of wages by [REDACTED] has been ongoing since 2002. Despite numerous employees seeking to have this issue addressed by both [REDACTED] and FWO, neither organisation has been competent or willing to look into the issue, until recently when evidence that could not be disputed was presented to FWO. FWO have now been dealing with the issue for over 12 months, starting an investigation after a formal request in Dec 17.
5. This affects more than 50 employees and involves an estimated under payment of between 3-4 million dollars.
6. Prior to having FWO investigate the issue it took approximately 4 months of continuous phone calls to both FWC and FWO to determine who was responsible to look into the matter. Both organisations referred the employee to the other until I became involved and refused to stop calling until one of the organisations did something.
7. One of the key issues was simply determining what agreement or award the employee was under as the Agreement provided by the employer was not held by FWO, FWC or IRQld. When questioned if the Agreement provided by the Employer, [REDACTED] was still valid, no clear answer could be obtained form FWC, FWO or IR QLD. This demonstrates a systemic failure in the processes to provide employees such simple information as to whether the Agreement provided by the employer is actually applicable to them and valid.
8. Upfront some of the problems involving this issue over the past 15 years include:
 - a. [REDACTED] refusing to provide details of agreements or deliberately providing agreements that did not apply to the employees despite repeated requests by employees.
 - b. FWO conducting no level of investigation into initial claims, including advising several employees that they were under agreements that did not apply to them.
 - c. Refusal of [REDACTED] to provide pay slips and timesheets even after they admitted to paying less than the minimum award wage for over 5 years.
 - d. Payment of backpay for less than minimum of award rates, without providing details of the payment in payslips or group certificates, even after formal correspondence to [REDACTED]. This makes simple things such as tax returns impossible.

9. After seeking FWO mediation, one employee (23 year old) was advised 24 hours prior to the planned mediation [REDACTED] advised they would be represented by a Barrister from a major law firm. When FWO were contacted to have the mediation postponed to allow the employee to seek more advice, FWO refused the request until threatened that the issue would be raised higher.
10. The following are details sent to FWO following attempted mediation with [REDACTED] and requesting a formal investigation: This was sent in Nov / Dec 2017.
11. After a planned second mediation meeting [REDACTED] failed to attend the planned FWO organised mediation. This resulted in the employee losing a days work due to attending the meeting. The failure of [REDACTED] to attend the mediation was not a surprise and demonstrated the continuing contempt they have shown towards employees throughout the entire process.
12. Following [REDACTED] failure to attend the second planned mediation the employee was not prepared to continue this means to solve the problem. Not because he did not what to have this matter resolved, rather the manner in which [REDACTED] have behaved to date have clearly indicated they have no willingness to find a resolution. He based his reasoning on the following:
 - a. [REDACTED] have admitted to underpayment of the minimum award wage for his entire 5 years of employment with them. They claim underpayment in the vicinity of \$11200. He believed they have under paid him in the vicinity of \$76k
 - b. [REDACTED] have admitted in writing that the wage agreement they advised he was covered by, despite numerous requests for clarification, did not actually cover him.
 - c. The failure of [REDACTED] to provide copies of payslips and timesheets as requested despite repeated formal written requests. I would think that [REDACTED] admittance to underpayment, would justify requesting these documents to confirm their calculations of the level of underpayment. He did not have a high level of trust in them.
 - d. The approach by [REDACTED] to advise of new information and their representation by a very experienced Barrister, less then 24 hours prior to the planned previous mediation. This was intimidation and bullying.
 - e. Although the claim is technical in nature, [REDACTED] insistence the employee attend the mediation on 1 Dec 2017 in person rather than be represented, and then failing to show up at the mediation capped their level of contempt for both the employee and the process conducted by the FWO.
 - f. The employee cannot afford to lose any more days of work, setting aside time for mediation that clearly will not result in any outcome.
13. As a result of discussions with FWO following [REDACTED] failure to attend the mediation in Nov 2017 a request for a formal investigation was made. The employee highlighted considerable new information that had come to light since he first lodged his complaint with the FWO in Jul 2017. Due to [REDACTED] behaviour, admittance of underpayment, admittance of not being under the agreement they continued to advise him

he was under, he requested FWO conduct an investigation into this matter. Initial discussions with FWO about an investigation did not provide any level of assurance that actions would be undertaken by FWO. They also did not start the investigation until approx. 8-10 weeks after the request.

14. He was aware that FWO do not conduct many investigations and preferred to seek resolution via other means such as mediation, but as demonstrated to date these have failed. He tried to use FWO recommended processes but [REDACTED] LTD have not demonstrated any willingness whatsoever to use these means to reach a resolution. After consulting the FWO Compliance and Enforcement Policy he firmly believed this case fits well within this policy for an investigation to be conducted.
15. In the following pages he will provide the new information that has come to light since the initial complaint was lodged and also highlight the relevant sections in FWO Compliance and Enforcement Policy that he believes are relevant in this case.

New Information:

16. The initial wages claim related to underpayment and questions relating to what agreement he was under. He was continually informed by [REDACTED] he was covered by the 2004 [REDACTED] Certified Agreement. Despite repeated requests from him, as late as Apr 2017, on the validity of that agreement to his employer, he was continually told it was the Agreement applicable to him and it was Legal and Valid. [REDACTED] have now admitted in writing that he was not covered by this agreement, but are now claiming he was covered by a 2001 [REDACTED] Certified Agreement. The cover page of the 2004 [REDACTED] Certified Agreement clearly states that the 2004 Agreement cancels the 2001 Agreement. He contacted the Industrial Relations Commission Queensland and they advised his reading and understanding of the 2004 Agreement in that it cancelled the 2001 Agreement is correct. Advice from both FWC and IRC QLD indicate that it is not possible for him to be covered by a 2001 agreement as legislation has changed considerably since then, with the introduction of Work Choices in 2006 and then the Fair Work Act in 2010. [REDACTED] continue to take the line of argument that the 2001 Agreement is applicable to him. In the absence of a valid and legal Employment Agreement, under the Fair Work Act 2009, it is a requirement to pay IAW the appropriate Modern Award. The Award that covers him is the [REDACTED] and [REDACTED] Award 2010.
17. [REDACTED] have admitted in writing to underpayment of wages just based on the minimum award wage. Their calculations are in the vicinity of \$11200. He noted in the spreadsheet they provided him the underpayments did not occur in one year or a small number of pay periods, but across his entire 5 year employment with them. He could not understand how this could be interpreted as a mistake. Each year there is a national minimum wages review and following that review I would expect employers to review their pay rates and adjust them accordingly. This seems to be a deliberate act on

behalf of [REDACTED] to underpayment even when applying the minimum award wage.

18. In researching the technical matters since his complaint I have also determined that [REDACTED] have never provided him with a copy of the National Employment Standards (NES) as required by legislation. If he had been provided with a copy of the NES, he would have requested a review of the agreement [REDACTED] [REDACTED] advised he was under via the FWC several years ago.
19. I have also noted that [REDACTED] have not met their obligations as per the NES in relation to the payment of correct annual leave entitlements. The employees are all shift workers, but have never been paid the correct leave entitlement, that being 5 weeks per year. Instead [REDACTED] only paid 4 weeks leave.
20. The employee also requested copies of his pay slips and timesheets since being advised by [REDACTED] of underpayment. In the circumstances noted, I do not believe this is an unreasonable request. I believe it is a requirement by legislation to provide these. In they are held on site within 3 days, or if held offsite 14 days. Despite repeated requests, including in writing to their lawyer, [REDACTED] have refused to make these available to the employee.
21. I believe this case is very simple:
 - a. There was no employment contract covering the employment of employees whilst employed at [REDACTED] since 2004. Therefore, all employees should have been paid IAW the appropriate modern award since 2006
 - b. [REDACTED] have admitted to underpayment, less than the award wage. This occurred over the entire 5 year employment period one employee was employed. Has this been going on longer?
 - c. [REDACTED] did not meet their obligations as required in the provision of a copy of the NES to employees.
 - d. [REDACTED] did not meet their obligations as required under the NES in paying the correct annual leave entitlement to shift workers.
22. I am finding it extremely frustrating that these simple facts do not lead to a speedy resolution by FWO, rather I have continued to meet with irrelevant legal arguments and failure to provide basic information eg payslips and timesheets, and now dealing with the contempt demonstrated by [REDACTED] failure to show at the planned mediation in Dec 2017.
23. Several other ex employees of [REDACTED] have also contacted FWO due to having similar problems. Research has determined that no employees of [REDACTED] have had a valid and legal employment contract since 2006 (as a minimum) and no employee has been paid IAW the appropriate modern award as required by the 2009 Fair Work Act. This would raise questions as to whether other employees have even received the minimum base award wage. On probability, I do not believe they have.

24. Discussions with other ex employees have also identified issues relating to non payment of the correct annual leave entitlement as specified in the NES.
25. It is disappointing to learn that one ex employee (name can be provided - he has given me permission to mention his case) raised similar issues to the FWO, only to be told he was under a 2014 [REDACTED] Agreement by the Fair Work Ombudsman Office. This occurred within the two weeks of [REDACTED] admitting the agreement they advised employees they were covered by was incorrect, highlighting the lack of investigation by the FWO despite being given all details including ABNs. A simple level of investigation by the FWO staff would have determined that this advice was incorrect and would have identified that there was (and I believe still is) no employment agreements between [REDACTED] and its employees. The raising of these issues by more than one employee, I would think would be ringing alarm bells about how [REDACTED] has been conducting it's business relating to payment of employees.
26. [REDACTED] have a number of subsidiary Companies including:
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
27. Although a number of these companies do not actually operate, I estimate that they are at least approx. 50 individual employees involved . In the employees letter of demand to [REDACTED] of 27 Aug 2017, (cc copy to FWO) he provided an estimate of his underpayment, based on the [REDACTED] and [REDACTED] Award 2010. He has not been able to use the calculator on the FWO website as [REDACTED] refuse to provide timesheets or payslips. Following further research, I believe this employees level of underpayment is in the vicinity of \$70k, plus superannuation of \$6650.00. This also means an underpayment of taxes to the ATO of approx. \$21k. If I was to apply this to all employees of [REDACTED], based on approx. 50 employees, this totals (only over the past 6 years not dating back to 2006 when they told employees they were under an agreement that they were not) :
- Underpayment of wages approx. \$2.8 million
 - Underpayment of superannuation of approx. \$260k
 - Non payment of taxes to ATO of approx. \$750k
28. I could be incorrect in my application of my circumstances to other employees, but I am very confident of the facts based on my discussions with other employees and ex employees of [REDACTED].
29. I am also aware that employees within [REDACTED], part of [REDACTED] have recently received new employment contracts (Prior to purchase by [REDACTED]) and have anecdotal evidence that the new employments contracts have continued along the lines of previous agreements. When management were asked what agreement or award the employees are now working under have been told the same as your last agreement. At this

stage [REDACTED] are well aware that the agreement they had told their employees they were covered by since 2006 is not applicable, however it seems that they are happy to continue to sell the lie to employees. If this is true (and I am confident it is), this further demonstrates the contempt in which [REDACTED] is treating it's employees and deliberately disregarding Commonwealth Employment laws.

30. The following are appropriate aspects drawn from the FWO Compliance Policy to highlight the inappropriate actions by [REDACTED] and the employee trying to provide justification to FWO to conduct an investigation.

Conditions on Which an FWO Investigated should be conducted – Compliance and Enforcement Policy

6.2 What do we consider?

30. In deciding how we will act, we consider the seriousness of the alleged conduct and the circumstances of the parties, as well as the practical issues involved in resolving the matter. This includes whether the request for assistance involves:

- public interest (where the community would expect us to be involved). [REDACTED] **is a large employer within the small town of Hervey Bay. As this case seems to involve a large number of employees relative to the size of the town, it would be in the public interest to ensure employees are being paid correctly.**
- a party facing significant barriers to resolving the matter themselves, for example, low levels of literacy or comprehension
- a small business owner, who has limited access to a human resources expert
- a party who has had previous issues with compliance
- an alleged breach appears to be deliberate. **The actions of [REDACTED] seems to be deliberate. They have admitted to underpayment of the minimum base award wage. If this occurred in one year or several pay periods it could be seen as a mistake. However, they have admitted in writing to underpayment, less than the minimum award wage over a period of 5 years. Employees have also requested over the past 5 years (as a minimum) confirmation from [REDACTED] of the award they were under and have been deliberately told they were under an agreement they now admit in writing did not apply to them. I find it difficult to accept that these could be seen as mistakes noting this has been occurring for the past 10 years. [REDACTED] have also refused to provide copies of payslips and timesheets to allow employees to work out the unpayment. Following [REDACTED] payment for the less than award wage, no details on the group certificates or pay slips have been provided despite formal requests for this information. This makes it impossible to submit a correct tax return to the ATO.**

- sufficient information to support an argument that a breach has occurred . **The information provided above is considered significant and provides irrefutable evidence that a breach of underpayment has occurred.**
- confidentiality (where the employee does not want us to tell the business that a request came from them)
- the parties having made any attempts to resolve the matter . **The employee attempted to resolve the matter via the FWO Mediation process, however [REDACTED] [REDACTED] have treated the process with contempt, as demonstrated by not turning up at a planned mediation on 1 Dec 2017.**
- breaches of monetary entitlements where the amount is significant. **The amount is considered significant for a 23 year man. He is claiming approx. \$76k. This amount is significant as if he had of been paid correctly, he would have been able to save a deposit for a home. When this situation is applied to all employees (as I believe it does), the amounts of underpayment for wages are in excess of \$3 million, underpayment of superannuation of approx. \$260 and missed taxes owed to the ATO of approx. \$750k.**
- minimum entitlements as opposed to above award conditions (we give priority to minimum entitlements, that is, entitlements set out in the Act, a Modern Award or Enterprise Agreement). **[REDACTED] have admitted in writing to underpayment, less than the minimum award wage. They have also not complied with the NES in the payment of the correct annual leave entitlements.**
- an employment relationship that has ended, including how long ago the employment ended (we generally do not pursue matters that are more than two years old). **The employee tried to seek resolution with the employer prior to his resignation (due to poor wages) and sought the assistance of the FWO within weeks of his resignation. There are several other cases of employees of [REDACTED] [REDACTED] contacting FWO within weeks of leaving, but in at least two cases, the staff within the FWO have not done their job and provided the correct information. An example was provided above applying to name can be provided.**

As an example, we would act differently in a case where a young person is being paid less than the minimum wage than in a case where an employee on above award wages hasn't received the bonus they are entitled to. **Using this example, the employee started employment with [REDACTED] [REDACTED] when he was 18 and worked until he was 23 and his employer has admitted to underpayment of the minimum award wage for his entire employment and has not paid the minimum requirements of the award or the requirements set out in the NES.**

Promoting compliance – what to expect

One of our main roles is to promote compliance with Commonwealth workplace laws.

Our inquiries and investigations are important ways we obtain evidence of serious non-compliance. We measure the seriousness of non-compliance by the potential impact it has on an individual,

group or market. We may decide to conduct an inquiry or investigation where the available evidence suggests there is:

- exploitation of vulnerable workers (e.g. aged, young, overseas) [REDACTED]
[REDACTED] **has exploited young and older workers and admitted to underpayment less than the minimum award wage. Approx 50% of the deckhands employed by [REDACTED] are under 25 years old.**
- significant public interest or concern (e.g. pregnancy and age discrimination)
- blatant disregard for the law, or a court or commission order. [REDACTED]
[REDACTED] **has demonstrated a blatant disregard for the law by underpayment of the minimum wage over a period of 5 years, failing to have an employment contract with employees and then failing to pay employees IAW the appropriate modern award, failing to adhere to the requirements of the NES in at least two areas – these being not providing copies of the NES to employees and failing to pay the correct entitlements for annual leave, failure to provide copies of payslips and timesheets following formal requests.**
- deliberate distortion of a level playing field to gain a commercial advantage (e.g. large scale non-compliance that distorts the labour market), or
- an opportunity to provide an educative or deterrent effect.

Inquiring into a matter

We sometimes receive information from the media or the public which suggests non-compliance. We often decide to inquire initially into the matter rather than commence an investigation. In doing so, we encourage all parties involved to speak with us and provide information that supports their point of view. Our focus is on helping the parties, where possible, to comply with the law and resolve the matter quickly and informally.

During such an inquiry we may ask parties to provide evidence such as time and wage records, or other documents. Where an inquiry identifies deliberate or repeated breaches of Commonwealth workplace laws, the matter will be treated seriously and investigated. Where evidence is disputed, parties may be encouraged to resolve the matter through a small claims procedure.

In other situations, where we believe that the information we have received from the public warrants detailed research, we may decide to conduct a comprehensive Inquiry. **Information has been provided to FWO via this case that demonstrates serious non-compliance with Commonwealth workplace laws. The actions of [REDACTED] can only be seen as deliberate as demonstrated by the time(5 years) in which the company has continued to pay less than the minimum award wage, not ensuring a valid and legal employment contract is in place (or pay IAW the appropriate modern award) and creating new employment contracts knowing full well that the information provided to employees in relation to the agreement they are covered by is incorrect.** This type of inquiry reviews allegations of serious non-compliance with Commonwealth workplace laws by looking at information about what has happened or is happening in a particular workplace, industry, supply chain or labour market. After our review, we form recommendations and actions based upon our findings, including the possibility of an enforcement outcome. We also publish the findings from this type of inquiry on our website.

Investigating a matter

In circumstances which involve serious non-compliance we may conduct an investigation. This happens only in a very small number of cases.

An investigation is where a Fair Work Inspector considers allegations and gathers and examines evidence to determine if there have been breaches of Commonwealth workplace laws.

We do not represent any party. All investigations are impartial and the Fair Work Inspector will rely on the evidence available when making a decision.

We will always provide each party the opportunity to be heard during an investigation. We also use discretion to decide on the best process or reach the best outcome for an investigation.

In an investigation, a Fair Work Inspector can use powers under the Act to visit workplaces, interview people or require records or documents to be provided.

In some cases, usually where Fair Work Inspector's have been unable to obtain evidence or information using voluntary or other methods, the Fair Work Ombudsman and specified Senior Executive officers can issue a notice to require a person to provide information, produce documents or attend and answer questions. **It should be noted despite repeated request for copies of payslips and timesheets, [REDACTED] have simply ignored these requests. [REDACTED] have admitted to underpayment of minimum award wages and the employee is unable to determine the level of underpayment if these records are not provided. It seems in this case an investigation is required to allow FWO to issue notices to provide payslips and timesheets to sort out the very basic issue of the amount of underpayment less than the award wage as a minimum.**

During an investigation, we expect all people to:

- always tell us the truth
- fully disclose all relevant matters from the outset of the investigation
- provide us with relevant information as it comes to hand
- respond in a timely manner to our requests.

Infringement Notice

An Infringement Notice is a fine given for breaching the record-keeping or pay slip requirements of the Act and the Regulations.

Infringement Notices can be issued up to 12 months after the breach occurred.

We have discretion over whether an Infringement Notice is issued and the amount of the fine (up to the legal maximum). We will consider matters such as:

- whether the breach impedes a Fair Work Inspector's ability to find or calculate underpayments

- whether the breach meant that an employee did not have information needed to recover entitlements. **The failure of [REDACTED] to provide basic payslips and timesheets has meant I have not had the information I need to calculate my unpaid minimum award wage and underpaid entitlements.**
- whether the employer has a history of breaching time and wage record-keeping or payslip requirements
- whether the breach was deliberate to avoid obligations under Commonwealth workplace laws. **The failure to provide payslips and timesheets can only be seen as a deliberate act.**
- whether the breach had significant implications, for example an employee being unable to secure a loan due to lack of pay records. **The implications of underpayment, below the minimum wage, failing to pay IAW the appropriate award and failure to pay IAW the provisions set out in the NES have had a significant implication on many employees. The under payments are in excess of \$12k per year for one employee. The payment of the correct wage and entitlements would have allowed him to save a deposit for a house, however as he has not been paid correctly he has missed opportunities and now has no option but to rent.**

The Fair Work Inspector handling the investigation will update the parties with developments at regular intervals.

The Fair Work Inspector will advise parties of investigation findings in writing and include details of how the outcome was decided. The findings will be provided within seven working days of the Fair Work Inspector's decision.

We seek to be reasonable and proportionate when conducting investigations. The average duration of an investigation is three months.

Compliance Notice

A Compliance Notice is a written notice that legally requires a person to do certain things to fix breaches of the Act.

A Compliance Notice can be used where a Fair Work Inspector reasonably believes that a person has breached a term of the National Employment Standards, a modern award, enterprise agreement or other instrument that specifies wage rates and entitlements. [REDACTED] **have breached the NES, failure to provide a copy of the NES to employees and failure to pay the correct leave entitlements. They have also breached the minimum wage rates for a period of 5 years. They have also breached the modern award, by refusing to pay IAW the award and bullying individuals into believing they were under an agreement that did not apply them.**

We typically issue Compliance Notices where an employer hasn't agreed to, or we suspect the employer won't, rectify an alleged breach. A person who has received a Compliance Notice may seek a review through the courts.

The decision to issue a Compliance Notice is not taken lightly, as a failure to do what the Compliance Notice requires in the time stated is likely to result in us starting legal proceedings in a court. We can take action for both the original breaches and the failure to comply with the Compliance Notice. A failure to comply can result in significant financial penalties of up to \$31,500 for a company and \$6,300 for an individual.

When considering whether to issue a Compliance Notice, a Fair Work Inspector will consider:

- the nature and extent of the breaches
- the level of cooperation from the employer. [REDACTED] **has shown complete contempt and demonstrated little cooperation to find a resolution to this matter. Their failure to attend the FWO mediation on 1 Dec 2017 is example of this. This matter has now been in the FWO framework for over 9 months.**
- whether the Compliance Notice will achieve a better and/or faster outcome
- the desire to bring about a cost effective and quick resolution to recover underpayments owed to individuals. [REDACTED] **have shown no desire whatsoever to bring about a cost effective and quick resolution to this matter. [REDACTED] were first contacted formally (using the FWO framework) in Aug 2017 with a letter of demand. They initially replied on 11 Sep 2017 stating that they had indeed underpaid , the employee but provided no details, including the reasons why or the amount. No further contact was received until the employee went back to FWO several weeks later and the FWO contacted [REDACTED] [REDACTED] have also included irrelevant legal arguments and consider it appropriate to be represented by a Barrister at a mediation. This demonstrates a bullying approach and is suggesting also seek the assistance of a Barrister for mediation. This is clearly not demonstrating a desire to bring about a quick and cost effective resolution.**