EDUCATION, EMPLOYMENT AND SMALL BUSINESS COMMITTEE

Members present:

Mrs LM Linard MP (Chair)
Mr N Dametto MP
Mr MP Healy MP
Mr DJ Brown MP
Mrs JA Stuckey MP
Mrs SM Wilson MP

Staff present:

Ms L Manderson (Acting Committee Secretary)
Ms E Jameson (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO WAGE THEFT IN QUEENSLAND

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 16 AUGUST 2018

Brisbane

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The committee met at 9.30 am.

CHAIR: I now declare open this public hearing for the Education, Employment and Small Business Committee's inquiry into wage theft in Queensland. I would like to acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past, present and emerging. My name is Leanne Linard. I am the chair of the committee and the member for Nudgee. With me today are: Mrs Jann Stuckey, the deputy chair and member for Currumbin; Mr Michael Healy, the member for Cairns; Mrs Simone Wilson, the member for Pumicestone; Mr Nick Dametto, the member for Hinchinbrook; and Mr Don Brown, the member for Capalaba, who is a substitute member for Mr Bruce Saunders, the member for Maryborough, who is unable to attend today's proceedings.

Today's proceedings are similar to the proceedings of parliament and are subject to the standing rules and orders of the parliament. Media may be present, so all those present today should note that it is possible you may be filmed or photographed during the proceedings. The standard media rules and broadcast terms and conditions of the Legislative Assembly also apply to our proceedings today. Before we commence I ask everyone to please ensure that mobile phones are turned off or switched to silent mode.

On 17 May this year the Legislative Assembly referred to the committee an inquiry into wage theft in Queensland. Copies of the inquiry's terms of reference are available on the committee's web page or from committee staff. The terms of reference include: that the committee examine the incidence of wage theft in Queensland; the impact of wage theft on workers, businesses, the economy and community; the reasons wage theft is occurring; the effectiveness of the regulatory framework; and options for ensuring wage theft is eradicated. The program for today's hearing has been published on the committee's web page and there are hard copies available from committee staff. I now welcome representatives from the Queensland Council of Unions.

CARTER, Mr David, Worker/Chef

CLIFFORD, Mr Michael, Assistant Secretary, Queensland Council of Unions

MARTIN, Dr John, Research and Policy Officer, Queensland Council of Unions

CHAIR: Thank you very much for making yourselves available today. John, if you would like to make an opening statement of no more than five minutes, then we will open it up for questions.

Dr Martin: Thank you, Chair, for this opportunity to address the committee. We provided a written submission, which I do not intend to detail to any great extent other than to make some preliminary comments. In our submission, the evidence of wage theft is extensive. We set up a web page to enable workers to tell their stories. Those stories have fairly much coincided with what we previously believed and back up the fact that there are a range of industries in which wage theft appears to be a business model and in fact is more common than compliance. I think there are adequate examples in the public domain, and some of the more high-profile cases are touched on in our submission. What we would like to focus on now is what is to be done. In terms of those suggestions I will make some brief comments, Michael Clifford will also make some comments and David Carter is also here. David has been a chef in the hospitality industry for 22 years, and the committee may have questions of him regarding his experience.

I will now briefly discuss two of the suggestions we are making to the state government. The first is the establishment of an industrial division in the Magistrates Court. That suggestion has been borrowed from the Victorian Magistrates' Court Act. One of the difficulties that affiliated unions have is the expense and time associated with trying to recover unpaid wages within what is now, post Work Choices, the federal jurisdiction. They are all Federal Court matters, which are expensive and time consuming. There is a reluctance to use the state magistracy for a range of reasons, one of which is the understanding of magistrates themselves. We suggest the creation of an industrial division within the Magistrates Court which would have expertly skilled magistrates who are able to deal with these types of matters fairly quickly and, hopefully, with less expense. We have included the section—with

emphasis added—from the Victorian act in our submission. The wording in relation to how that court would operate looks very much like how an industrial tribunal would operate, and that is not being bound by legal form to the same extent, but it is still a court of record which would enable recovery under the Fair Work Act.

That is one of our suggestions. The other, which is perhaps a little more controversial, is criminalising wage theft. As you would also be aware, that has been promised by the Andrews government in Victoria if they are re-elected. We have had a look at that within the QCU, and we have come to the conclusion that that is certainly worthy of consideration and we are advocating for that. Why is that the case? It is to bring some balance to the employment relationship. If a worker steals from their employer, not only is it treated as theft but it is actually an aggravated offence under the Queensland Criminal Code. The thought that it is an aggravated offence for an employee to steal from the employer but it is dealt with as an administrative matter from the point of view of an employer stealing from an employee is fairly well stuck in the 18th century, from our point of view. The language used in the Criminal Code talks about 'stealing as a servant'. In any case, we would direct you to submission No. 27 from Hall Payne Lawyers. I understand that John Payne will appear this afternoon, and he is better placed than I am to discuss legal technicalities. One of our early concerns when contemplating this was whether there is the constitutional capacity to do so by virtue of section 109 of the Constitution, but Mr Payne seems quite confident it is possible.

We also suggest a range of other matters the state government might be able to do and is in fact commencing to do, such as using procurement policy to ensure compliance. The question is the extent to which that will succeed. I might hand over to Mr Clifford at this stage and allow him to address some of these matters.

Mr Clifford: I want to reiterate one of the points that John made about criminalising wage theft. We are not saying that we should send people to jail for simple oversights or mistakes. I think some of the media around that has agitated that point. That is not what we are arguing. We are arguing that criminalising wage theft should happen in situations where it is intentional and where it is reckless. As John has already said, the Hall Payne submission goes into some detail around that. I believe that the Maurice Blackburn submission also goes into some detail around that.

The two points I would like to raise go to issues that occur in the federal jurisdiction. We hope that the committee is in a position to make recommendations to the federal government around some changes that we think should occur at the federal level. One of the important parts of wage theft, of course, is the theft of superannuation. In the stories that John mentioned we have heard many, many stories of people who have not been paid their superannuation. In August last year there was a story in the *Australian Financial Review* which stated that the Australian Taxation Office estimates there was at least $17 billion worth of superannuation stolen from workers over an eight-year period. The Australian Institute of Superannuation Trustees says that is a conservative estimate. We know that this is a huge problem. It is not just a huge problem for those workers who are robbed of their retirement savings but it is also a big problem for the community, because it puts a lot of pressure on our pension system if people do not have their superannuation savings when they finish their working life.

Similarly, wage theft itself is a huge impost on the community. A lot of wage theft that we see is cash in hand and being paid below minimum rates of pay. Of course, that also means that taxation is not being paid, which means there is a cost to the community—not just the worker and their family—around wage theft when we are not getting taxes to put into the services we need.

When it comes to superannuation, of course the Australian Taxation Office is responsible for pursuing stolen super. We do not think they are properly resourced to do that, nor do we think they are properly motivated to do that. Superannuation is deferred wages. We believe that superannuation is an industrial entitlement and should be treated as such. We would ask the committee to consider recommending to the federal government that they ensure superannuation is treated as an industrial entitlement. You can do that by putting it in as part of the National Employment Standards in the Fair Work Act. If it is part of the National Employment Standards it can be pursued and prosecuted for like any other industrial entitlement. Importantly, unions would be able to investigate stolen super. Unions would also be able to prosecute to make sure that superannuation is returned to workers. We think that is a very important and simple change the federal government could make around superannuation.

The only other thing I wanted to draw your attention to, which is in our submission at page 40, is the role of the trade unions in preventing wage theft. We do not think it is a coincidence that we have seen an increase in the incidence of wage theft that has coincided with a reduction in union rights to enforce people's entitlements. In 1996 we saw changes to federal law around union right of

entry to investigate breaches. They changed in three fairly significant ways in particular. When I was an organiser in the Finance Sector Union in the early 1990s, I could go in and check bank records and make sure that people were being paid properly and that they had received their overtime. Often you would find oversights, but you would bring them to the manager's attention and they would be fixed. You did not have to suspect a breach. Now you have to suspect a breach before you can have a look at any records. That is the first legal hurdle, because often employers can use legal resources to prevent unions from even investigating records with arguments about whether it is a reasonably suspected breach or not. We do not think there should have to be a suspicion. We believe you should be able to ensure that workers are being paid properly and that employers are doing right thing.

The second restriction is that we are restricted to looking at member-only records. We know that wage theft most often happens in places where you do not have strong union membership. Where you have 100 per cent union membership you will not find instances of wage theft. You will not find deliberate attempts by the employer to rip their workers off. The workers in those places are well educated and well supported, and they simply would not let it happen. We find it most often happens where you have no union members or where you might have one or two union members. Where you have one or two union members, those people would be very reluctant to stick up their hand and say, 'I'm the person that's going to report this,' because they know they will not have a job tomorrow if they do. When you say that a union can only investigate the records of union members, it really exposes people who are union members. You can go through a legal process to try and inspect the records of non-union members in the federal jurisdiction, but, again, it is a legal hurdle which is not simple to overcome. It puts another barrier in the way of us being able to properly address wage theft.

The final area I will go to is when you have employers who have dodgy records. I have been involved in investigations of this nature where you had employers holding two sets of records—one that was legitimate and one that was not. When you are investigating false records, it is very difficult to get the evidence that you need to demonstrate wage theft. In that instance, interviews with workers are vitally important. The legislation changed to restrict the ability of unions to conduct interviews with workers. The employer can put out an email and say, 'Anybody who wants to complain about the fact that you have not been paid properly or paid overtime, let us know and you can talk to the union official.' Of course, most workers will not do that. You would be put in a lunch room or a place that is fairly visible. Again, you are being seen to dob in the boss. It makes it very difficult for workers to tell their story truthfully in those circumstances.

We think that unions need the capacity, as we used to pre 1996, to go around and talk to workers individually to get their stories. The Fair Work Ombudsman made a similar point, particularly when they were investigating the 7-Eleven wage theft. They said that the interviews were the most valuable tool they had and it was important that they be able to get truthful submissions from workers when they spoke to them. We agree with that and we think it is vitally important that that change.

If we can allow unions to have the sorts of rights they had pre 1996—which, quite frankly, I do not recall people complaining about—you would have a couple of thousand more people being able to ensure that employers are doing the right thing and that workers are getting their proper entitlements. We would encourage you to look at that particular aspect of wage theft and the role that unions play in preventing it. Thank you.

CHAIR: Thank you. I want to clarify, was there an intention that Mr Carter would tell his story? I am mindful of the time to allow committee members to ask you questions.

Dr Martin: I think Mr Carter's story is told quite clearly in pages 15 to 17 of our submission. That would not be apparent to you from reading the submission.

CHAIR: You are happy for us, on the basis of what you have provided, to ask questions when relevant?

Mr Clifford: Yes.

CHAIR: Thank you for your opening statement and thank you for the time that you have taken to put a fulsome submission to the inquiry. It assists us significantly. Michael, you mentioned intentional and reckless conduct in respect of wage theft. Other stakeholder groups and employer groups have made the point that in most cases it is accidental misclassification or just honest errors. Can you speak to that wage theft? You have said that it is talked about a lot. There are a lot of very high profile cases about how significant it is, but there is a group who say that it is just accidental. What are you seeing and can you respond to that?

Mr Clifford: In my time—and I have been a union official for about 20 years—I have seen a lot of accidental wage theft. I have also seen a lot of intentional wage theft and I have seen it increasing in particular areas. For example, we know that in hospitality—and that is where I have come across

a lot of intentional wage theft—there are particular problems. We know that the Fair Work Ombudsman released a report in July this year saying that an investigation of valley businesses exposed that 60 per cent of those businesses were not complying with the law and 38 per cent of those businesses are underpaying their workers. We know that it is a big problem in particular areas.

I think it is a big problem in places like labour hire. As I stated before, I think it is a big problem in places where you have low levels of union membership. There is no doubt that some of it is accidental. I notice that in today's *Guardian* the National Retail Association expressed the view that the exploitation of workers in any industry is not a failure of legislation but a failure of the wider system to educate workers in their rights under the legislation. We think that education is an important aspect of this. We think that we should be looking at ways to educate workers. We think that trade unions have an important role to play in that. We think that the government has an important role to play in that. We also think that employer associations, or employer unions, have an important role to play in educating their members about their obligations to pay the right wages and entitlements. If there is confusion, we think that the parties working together could work to address that. We do need to look at what happens, to educate workers about their rights and entitlements, and we need to look at ways that we can improve that.

Dr Martin: If I could add to that, in table 2 on page 22 of our submission there are the responses to our website. We do not claim statistical significance with that; however, it is in the order of 175 responses, which is a reasonable survey. If you look at 'wrong classification', it is 4.6 per cent of responses. It is probably what you might describe as a First World problem in terms of 'I should have been paid food and beverage attendant level 3 rather than food and beverage attendant level 2'. Yes, that exists, but when you are talking about an hourly rate of pay that does not resemble anything that is contained in an industrial instrument anywhere then that is quite clearly deliberate. The failure to pay superannuation—'Whoops, no super paid.' What else can that be described as? The independent contractor is one that was probably more prevalent than had been expected. They were 16 per cent of responses. When we asked them what was the wage theft they said, 'Either independent contractor or ABN.' If you are dressing up someone who is clearly an employee as an independent contractor, that is not a mistake; that is quite a deliberate decision.

CHAIR: Your submission makes the point that wage theft is prolific. Would it be fair to say that intentional wage theft is equally prolific?

Mr Clifford: Absolutely and increasingly. If I may suggest, David might have something to say about that as well in his experience in the hospitality industry.

Mr Carter: Yes, over the years I have experienced quite a significant amount of wage theft. Every single person I know who has spent a reasonable amount of time working in hospitality has wage theft stories—from being worked well and truly over your salaried hours to penalty rates not being paid and superannuation not being paid. I do not know anyone who has spent more than a few years or has worked in a number of establishments who does not have wage theft stories.

CHAIR: Why is it so prevalent in your industry?

Mr Carter: It is ingrained. It is indoctrinated. You grow up in it. There is a fear element that they use and an intimidation element that they use for young employees especially—people who do not know what their rights are and are too naive or gullible. They just take the word of the employer—that they are entitled to do this, they are within their rights to do this—and it is never chased up. If you try to make an issue of it, in the hospitality industry everyone knows everyone else within a few degrees of separation. The intimidation factor they use is that you will be badmouthed and you will never get another job in this industry again.

CHAIR: Is it your experience that repeatedly there has been a clear and deliberate intent on behalf of your employers to knowingly hold back your rightful entitlements or is it that they have done so out of accidental misclassification?

Mr Carter: It is both. They know that they are working you well above your salaried hours, but I think they also think they can do that.

CHAIR: And get away with it?

Mr Carter: Yes.

Mrs STUCKEY: Good morning everybody. My question is to either Mr Clifford or Dr Martin. Thank you for coming along. I hope this experience is one that you gain something from. As you know, the federal government is the predominant regulator for private sector industrial relations in Queensland after it was referred by the Bligh Labor government. Is it your contention that the referral was a mistake and should be reconsidered by the current government?

Dr Martin: Could I correct you on that? The referral was the residual that was left during the Work Choices legislation. The Howard government used the corporations powers to take incorporated organisations. I think the estimates in Queensland were that about 85 per cent of the private sector was taken by Work Choices. The referral was when the Bligh government said, 'There is no point in keeping the private sector jurisdiction for unincorporated organisations.' As to whether the Howard government made an error with Work Choices, I guess history will be able to answer that particular question.

Mr BROWN: It is easy to see.

Dr Martin: In terms of the referral, I do not think there was any purpose in hanging on to unincorporated organisations, as Western Australia has done. I just do not see it. There was no point in doing it. No, I do not think the referral was a mistake.

Whether it has had consequences—unintended or otherwise—in terms of recovery, I would have to say yes. The Federal Court is a far more expensive and intimidating jurisdiction. When we were dealing with common rule state awards, the Magistrates Court and, in fact, the Queensland Industrial Relations Commission were able to deal with the recovery of wages. That is no longer possible. I am not sure that would have been the reason that the Howard government chose to take over private sector industrial relations. It may well have been an unintended consequence. From that point of view, it is more difficult. It is more expensive than it used to be.

Mrs STUCKEY: I note that you advocate that a change from centralised wage fixation to enterprise bargaining has contributed to the prevalence of wage theft. Could you elaborate on that? How do you think it could be remedied?

Dr Martin: That is drawn from the academic literature. It is from an academic who worked not far from here. I am showing my age to some extent. When we were dealing with industry level awards, there was a greater knowledge. Everyone would know the base rate in a particular industry. One of the consequences—and, again, maybe an unintended consequence—of enterprise bargaining is that that is no longer the case. Who gets paid what at each individual enterprise may vary. In some cases that may be quite legal; in others it may not. There was a period when there were statutory individual contracts—or AWAs—that we say institutionalised wage theft as well. What could be done about it? That is a tricky question. Obviously, education is important. If there were a greater capacity for industry level bargaining, that would certainly assist.

Mr HEALY: Good morning, gentlemen. This question is directed to either John or Michael. In Cairns, tourism is a significant employer. It is a big industry. We have a variety of challenges. If somebody has not been paid, what avenues are available to them to pursue getting that money that is owed? More importantly, if the business has closed down or is insolvent, what is currently available for those individuals?

Mr Clifford: I will give a brief answer and then I will ask John to respond in terms of the court system or through the commission. Of course, they could go to the Fair Work Ombudsman. Some of the stories that we hear about people taking issues to the Fair Work Ombudsman are less than satisfying. Again, it may be a resource issue for them, but there are common stories of people being told to go and talk to a lawyer, people being told that it will take many months to resolve their issue—many stories of frustration where, after many months, nothing has been done. That is one avenue for people to go down.

I have a story out of the hospitality industry where significant wage theft was taking place. People in a fairly large hospitality area were being paid $17 cash in hand—no pay slips, no taxation, no superannuation, no workers compensation, no penalty rates, no shift loadings being paid. We reported that to the Fair Work Ombudsman and they told us that they might be able to get to that in six months time. When you have workers who are being ripped off like that, you cannot afford to wait that length of time to start to address those issues.

Of course, people can go to their union. Again, with wage theft happening in areas where you have very low levels of union membership—and hospitality in Cairns, I imagine, is probably one of those areas—whether they are a member of a union is questionable in the first place. If they are, whether they are brave enough to stick up their hand and say, 'I want you to come in here and have a look at the books,' is also problematic. Again that is one of the reasons we need to address those right-of-entry laws to allow unions to inspect the books. Those are two avenues that people have. In terms of redress through the Industrial Relations Commission, it also goes to the point we made about an industrial arm of the Magistrates Court. I will let John respond to that.

Dr Martin: I think that summary is fairly accurate. The Fair Work Ombudsman does not have the resources to deal with the extent of the problem. That is for certain. With the greatest of respect to that organisation, whether they have the motivation is another matter too because, as you will hear, one of the concerns is that if an employer is underpaying then they may be undercutting a competitor who is complying with the law. That is an additional motivation that a union in a particular industry may have that a Commonwealth government agency may not—'this is our industry; we want to clear it up'—whereas to the Fair Work Ombudsman it is just another industry. I would imagine that there would be relatively low levels of membership in some of the areas in Cairns.

Mrs WILSON: Good morning, gentlemen. Thank you for coming in. Michael, you were discussing that wage theft has become an increasing issue. Why does that not correlate with the figures we are seeing of the downward trend in union membership? Wouldn't you think if there was wage theft in a lot of industries we would be seeing a lot more people wanting to become union members?

Mr Clifford: I think declining union membership is a problem when it comes to wage theft and it goes to the issues I talked about before. Where you have 100 per cent union density you will not find issues of wage theft. Where you find no union membership you are much more likely to find wage theft. Where you have low levels of union membership you are much more likely to find wage theft occurring. Again, it goes to the point that the National Retail Association makes about education. Union members tend to be better educated about their entitlements. They will likely have a delegate onsite who will know what their entitlements are and the delegates will be able to go and talk to the employer to make sure that the right thing is being done if they hear that the right thing is not being done. Generally, workers feel more empowered to take up those issues.

Where you do not have union membership then people do not feel empowered and you get the stories that David has talked about where people feel intimidated about raising issues. I do think there is a correlation, as you say, between union membership and wage theft and if we could get more union membership I think we would see less wage theft occurring.

Dr Martin: That might be 'the chicken and the egg' that we are talking about in terms of, yes, there is the proliferation of wage theft that coincides with declining union membership, but which caused which? Low wage growth is one of the greatest concerns that we now face—that is not the union movement saying that; that is the IMF and the Reserve Bank saying that—but what are some of the reasons there is such low wage growth? One is the decline in union membership and the other is the noncompliance. They might actually go hand in hand.

Mrs WILSON: With respect to that, Bill Shorten short-changed the cleaners when he was the union chief—

Dr Martin: This is Malcolm Turnbull's line. Is that all you have got?

Mrs WILSON: It is the truth.

Dr Martin: How does that coincide with the terms of reference of this inquiry?

CHAIR: Member for Pumicestone, is there a further question or was that meant to simply be a political statement?

Mrs WILSON: No, I will continue. You have also suggested that one action the state could take in this area, which is regulated by the Commonwealth, is to introduce new criminal offences. What would those specifically be and how would they integrate with the existing offences?

Mr Clifford: John might like to add to this but, as we said, the criminal prosecution would be for intentional and reckless acts from an employer and for intentional and reckless falsification of records. Again, we are not talking about situations of oversight. We are not talking about simple mistakes that are made, which we know occurs. This is to get to those employers who deliberately do not pay their workers. As John has said, it is not unreasonable to expect that an employer should do the right thing by their employees when employees can go to prison for up to 10 years if they steal off their employer. If you like, we are simply creating an even playing field here.

Mrs WILSON: Michael, do you agree with John's statement earlier that wage theft is a business model for some businesses out there?

Mr Clifford: I think that is right. I think we have seen it in franchise models in particular. I think some of the stuff that has been more high profile in the media—

Mrs WILSON: You couldn't be out there saying that about all businesses.

Mr Clifford: No.

Dr Martin: By no means.

Mrs WILSON: But that is how it is coming across.

Mrs STUCKEY: It is a pretty powerful statement.

Dr Martin: By no means is that the suggestion. Where does it say that?

Mrs WILSON: You said it. You said it before and I am asking for clarification.

CHAIR: Order!

Dr Martin: You are putting words in my mouth. What we are saying is that in some industries there is a significant level of noncompliance and it is a business model. I would also ask members to recall the inquiry into labour hire that was undertaken by this parliament the year before last in which that was established very well as a business model at the lower end of that particular industry. By no means are we saying that every employer is not complying with the award or otherwise. What we are saying is that there are industries and sectors where it is extremely prevalent. It is the Commonwealth government's Fair Work Ombudsman that is saying that in Fortitude Valley it found 60 per cent noncompliance.

Mr BROWN: Thank you for coming in, especially you, David. My first job was in hospitality, as a casual. I was probably the only union member onsite. If I complained about my wages, being a casual—under the law hired and fired after every shift—I would not be on the next roster. Is that your experience as well?

Mr Carter: If you are a casual, absolutely not—or your hours would be cut back dramatically to the point where you were forced to find another job.

Mr BROWN: That was a common occurrence?

Mr Carter: Yes. If you went forward and complained about it and went to the ombudsman or your union, you could easily measure your remaining life at that job in days if not hours.

Mr BROWN: If I was a trapeze artist and I was relying on the safety net which we have at the moment as a worker, if there are holes big enough to fit 72 per cent of the hospitality industry through it then does the safety net even exist?

Mr Clifford: The safety net exists. It is just that a lot of people are falling below it. In the paper today there are stories about stagnating wages. We know that wage growth is a real problem. When you have people who are not even paying the minimum, of course that is a downward drag on our economy generally. As I said before, it is tragic and devastating for the families affected by wage theft, but it is also a problem for our broader economy and the communities where people are suffering wage theft.

Going to the issue that Mrs Wilson raised, this is also an issue for other employers. We know that not all employers engage in wage theft. We are not suggesting that for a second. I hope that no employer goes to prison because I hope that criminalising it acts as such a deterrent that it will not happen in the way that it is happening now, but it needs to be there as a deterrent. From the papers today, Andrew Bourke from the Executive Security Group has missed out on lots of contracts because other employers are engaging in wage theft. He says—

ESG has tendered for many contracts to only be rejected by clients … who want the cheapest rate and are not worried about what the security companies pay their employees or the quality of the security officers provided.

This is an issue for everybody, not just those people who are suffering wage theft. It is an issue for other employers and it is an issue for our community. The safety net is important and we need to make sure that it is upheld. I sound like a broken record, but unions have a really important role in ensuring that happens.

Dr Martin: I guess the failure to provide that safety net—it would appear that the existing penalties and enforcement infrastructure is not sufficient to do its job.

Mr BROWN: In my previous role as a union official, and part of it in the hospitality industry—you have made the point a couple of times that a union member who complains about their wages could be the only union member on that site—I would have to out that union member to inspect their time and wages records. Is that a deterrent to hospitality members actually joining their union to protect their wages?

Mr Carter: Absolutely. I have only become a union member in the last few years, purely because of wage theft that has happened to me. I have found in the last few years that just mentioning to my employer, 'You are aware that I am a union member,' can often be enough for them to straighten up and toe the line. It is definitely the case that there is a perception that nothing will get done unless you go off your own bat, but no-one in hospitality can really afford to army up with lawyers and go to court.

Mr BROWN: In your experience, have you been exposed to unpaid super?

Mr Carter: Yes.

Mr BROWN: How does it feel for a hospitality worker, mostly a young person, losing that compounding interest into the future?

Mr Carter: I recently spoke to a financial adviser. We were going over my superannuation over the last 20 years. I found out that I have only $33,000 in superannuation. When we went back through it, it turns out that only about 50 per cent of the restaurants I have ever worked at have actually paid my superannuation. I am now in a position where I am seriously concerned about what I am going to do come retirement.

Mr BROWN: That is a shame. You have worked hard. A fair day's work for a fair day's pay. To find that out must be heartbreaking.

Mr Carter: It is.

Mr Clifford: It goes to the point you were raising, Chair, that it is not accidental.

Mr DAMETTO: Thank you very much, gentlemen, for coming along this morning. As we all can probably agree right now, wage theft is happening in Queensland and Australia. My questioning will be more solution based and trying to figure out the root of this problem. Why do you believe this is actually happening—whether it is intentional or not intentional? If it is intentional, what are the motivations? Is it just pure greed from employers or is it that it is so hard to run a small business, or even a larger business, these days with such small profit margins that wage theft is built into the model?

Dr Martin: Our submission goes to that to some extent, based on the literature that is around. It has been what is described as fissuring of industry and there are a range of examples of that—for example, the reliance on franchising, subcontracting and labour hire. They have become fairly significant in a range of industries that otherwise you would have expected a higher level of compliance from. In franchises, for example, you will have a national brand but it is being run by a mum-and-dad company that is running the franchise. The suggestion certainly has been made in some of those cases that it is the pressure that is being applied on the person holding the franchise, the franchisee. There is, I guess, pressure being exerted to that extent, but when you get to a level where compliance is the exception rather than the rule then it is fairly difficult for anyone to compete in that sort of environment. Therefore, how we get to those circumstances is somewhat difficult. We are restricted by time. I would be happy to talk to you about previous experiences that I have had. Trying to get employers to a level of compliance within an industry is not easy, but it is possible. I would be happy to take that offline with you, as to how that might be done.

Mr DAMETTO: Thank you very much that, John. The way I see it, especially if we move away from franchises for a second and look at some of the small businesses, I have been a victim of wage theft myself in the past where my super was not paid and I was paid at a lower rate as well. Every day the gentleman who ran that business was struggling to keep the doors open and the other five employees working. He was in a position where he could not afford to pay the super or to pay us exactly what we needed but we all still needed a job. It was kind of a balancing act. As much as it hurt me to be in that situation, I could see that the employer was hurting as well.

Dr Martin: Another aspect is when industries become so ultracompetitive that they are cutting costs and, quite often, the cost that gets cut is workers' wages. However, that should not be done in an illegal way. You start shifting into the black economy when you start doing that. When competitive tendering is used to that extent it becomes a problem as well. That is why we say that government procurement, for example, is such a valuable tool to ensure compliance.

CHAIR: Thank you. The time for this session has expired. On behalf of the committee, I thank you for your time today. John and Michael, thank you also for the survey, for trying to bring forward people's stories. The success of this inquiry depends on hearing personal stories. David, we are sorry to hear of your experiences. Thank you for your willingness to come into an environment that is not always the most comfortable for people to tell their stories in. It says a lot that, even on this committee, the member for Hinchinbrook, the member for Capalaba and I—that is half of this committee—have experience of wage theft in our backgrounds. Obviously it is a concerning issue. Thank you for coming forward.

BRODNICK Ms Kate, Senior Policy Solicitor, Queensland Law Society

STEVENSON, Mr Rob, Member, Industrial Law Committee, Queensland Law Society

TAYLOR, Mr Ken, President, Queensland Law Society

CHAIR: Good morning and welcome. Thank you for coming before the committee and thank you for your submission. Would you like to make some opening comments and then we will open for questions?

Mr Taylor: Thank you for inviting the Queensland Law Society to appear at the public hearing of the inquiry into wage theft in Queensland. I am joined by Mr Rob Stevenson, who is our subject matter expert from the Industrial Law Committee, and Kate Brodnik, our senior policy solicitor.

As the committee will be aware from our written submission, the Law Society is an independent, apolitical representative body. We are the peak professional body for the state's legal practitioners, over 13,000 of whom we represent, educate and support. In carrying out our central ethos of advocating for good law and good lawyers, the society proffers views that are truly representative of our member practitioners. We assist the public by advising government on improvements to laws affecting Queenslanders and we work to improve their access to the law. It is on this basis that we made a submission to this inquiry.

Our submission concentrated on steps that the Queensland government could and should take with respect to tackling wage theft. Primary amongst these submissions is our call for better and increased resources. It is our submission that the Queensland government should actively lobby for and work with the federal government to secure the appointment of more judges to the Federal Circuit Court to deal with employment law matters. As you will see from page 2 of our submission, Queensland is severely under-resourced in this area.

Secondly, the government should commit additional resources to the Magistrates Court, including more magistrates, registry staff and registry resources, and additional infrastructure such as hearing rooms. In doing so, the government should also ensure that adequate resources are developed and published for individuals to use when pursuing employment claims when they are attempting to enforce a decision. Ideally, these steps will be supported by additional funding to the legal assistance sector.

Finally, the society's Reconciliation and First Nations Advancement Committee requests that the committee include in its inquiry the issues of stolen wages amongst first nations Queenslanders. This analysis should include but not be limited to the effectiveness of the reparations task force and scheme and an assessment of the current prevalence of wage theft amongst first nations people.

We are happy to answer any questions that the committee may have. I will defer to Mr Stevenson, who is a member of our Industrial Law Committee and an accredited specialist in workplace relations.

CHAIR: Thank you very much for the submission to the committee and for the expertise that you bring. Mr Stevenson, can I clarify whether you were seeking to make an initial opening comment?

Mr Stevenson: No.

CHAIR: Thank you for the expertise that you bring. Feedback appears to be that matters can take a long time and also that it is an intimidating process. I read a submission recently from an employee group that said it is really open to employees who do identify that there may be an underpayment or a wage theft, whatever you wish to call it. There are all these avenues they can take. They can go to the Fair Work Ombudsman, obviously, or bring a case themselves to retrieve wages. Can you step the committee through that? Is it that simple? What is the average process for someone to come forward and say, 'I have been underpaid'?

Mr Stevenson: I am a sole practitioner specialising in workplace relations. I give advice to both employees and small and medium businesses. Quite often I get calls from members of the public. In most cases they have contacted the Fair Work Ombudsman first and, indeed, I recommend that they do so if they call me directly. I do ask if they are a union member, in order to get some support from there as well.

Generally speaking, the Fair Work Ombudsman is the first port of call. These days, practically, certainly my experience is that the Fair Work Ombudsman's assistance is limited to giving some assistance in working out what a claim may be—that can become problematic sometimes—and offering to mediate with employers. That mediation, as I understand it, is a voluntary process—

employers do not have to participate—but good results can occur. However, generally speaking the Fair Work Ombudsman will not themselves then take up the fight and seek civil penalties or payment orders against employers. They give the employees, I understand, a kit and refer them back to the civil process to help themselves. Generally speaking, the Federal Circuit Court in respect of private sector employees is the place that you go to for claims under $20,000.

At a state level, we have the benefit of an employment claim process under part 5A of the Magistrates Courts Act, which is very much underused, I suspect. It has a great benefit in that, once a claim is filed, the matter is then referred to the state Industrial Relations Commission for a roundtable in-person conference with a commissioner. That is certainly as I understand it. That early intervention is often successful in resolving a matter. Whether that is by compromise or what, I am not sure. Otherwise, in the Federal Circuit Court there is a claim form that is relatively intuitive to complete. It is not too bad at all. You file your claim form. It is then generally, I think, two or three months before you get a directions hearing in the court. Appearing in the Federal Circuit Court I certainly find an intimidating process, having been in courts all of my life. A busy court before one of the busy Federal Circuit Court judges is certainly not the most pleasant place to be if you are not used to it.

At that stage generally, as I understand it, matters are sent off to mediation if that is possible. LawRight has a volunteer mediation service that assists in the Federal Circuit Court. Personally, I act as mediator in some of those matters. The Federal Circuit Court relies on that volunteer service reasonably heavily, I suspect. It is relatively successful in resolving matters, although often by compromise. If that does not work, generally the matter will be set down for a date of hearings, and directions for the filing of material might be made.

In terms of the time that matters take to get to hearing in the Federal Circuit Court at the moment, certainly we are looking at several months at least, as I understand it, plus. In the Magistrates Court, if you are able to bring a matter through the simplified employment claim process, as I understand it, within a couple of weeks a conference occurs down at the state Industrial Relations Commission. If that is not successful, the matter goes back to the Magistrates Court and the matter is then listed for hearing relatively quickly. Not too many lawyers get involved in that process. It is designed as a relatively informal process, certainly going to a hearing.

The other alternative, particularly where matters are above the limits that are associated with these minor claims, is to use the standard Federal Circuit Court process or the standard court process through the common law courts, which takes time and costs money. There are potential down sides in terms of cost orders and complexity. To answer your question, that is the process as I commonly see it.

CHAIR: It is wonderful to have someone who has such experience in that process. It is interesting to me that you mention, as someone who is obviously trained and experienced, hat you yourself find that process intimidating. I note the figures from the Fair Work Ombudsman. You indicated that certainly you recommend people go there. The case studies and personal stories we have heard tell us that people essentially feel that they are on their own, because the Fair Work Ombudsman does say, along the lines of what you said, that you need to pursue it yourself. I understand about 0.2 per cent of all claims received by that regulator ultimately reach the courts. Really, people are on their own to take the matter forward. How much would it cost someone, on average? I appreciate that you cannot give me the exact costs.

Mr Stevenson: It depends on the model used, and obviously different lawyers have different cost regimes as well. In my case, I tend to give estimates depending on if you want the Rolls-Royce representation, where we do everything, or if you want us to assist strategically—helping them to help themselves by looking over draft documents, giving them guidance and that sort of thing.

CHAIR: An average?

Mr Stevenson: In terms of full legal representation, if a matter went to a hearing, certainly in the Magistrates Court that can run into several tens of thousands of dollars potentially. However, in fairness, if you are looking at one of the simplified claims processes where there is strategic assistance happening, that can range anywhere from a few hundred dollars to potentially a few thousand dollars, which are still very significant sums.

CHAIR: Yes, you are right. Your paper also provided information in regard to what it costs to file a matter and those essential processing fees. You were here to hear David before you, who works in a sector where I think you would say there are a lot of vulnerable workers—people working casually or part-time, a lot of young people or people who do not necessarily feel confident to advocate on

their own behalf. I imagine you do not see a lot of people who have even $500 or $10,000 sitting behind them to be able to recoup the money that they have lost in the first place. Would that be your experience?

Mr Stevenson: That is very much the case. In terms of wage claim matters, most of the cases that I see, working at the coalface, are really trying to point people in the right direction, pointing them to the relevant part of the Federal Circuit Court website, some assistance with the forms, for instance.

CHAIR: In the matters that you have seen come before you in a professional capacity, in what percentage of cases would you say the employer has been willing to sit down constructively in a mediation process?

Mr Stevenson: I would have to say, being put on the spot, that it is probably close to 50 per cent. That is purely anecdotal from me.

CHAIR: Maybe an accident, is it, in those cases—

Mr Stevenson: A lot of times smaller employers are ignorant. You could probably argue the toss about whether that is wilful ignorance or not in some cases. A number of employers whom I sometimes assist say, 'We were not really aware of what those obligations were or what the award provisions about overtime or penalty rates were, but we made it up in some other way. We gave them time off, we gave them a gift for Christmas, we did this and we did that.' In terms of what I see occasionally from the employer perspective it is more that situation rather than reckless or intentional underpayments. I suppose most of those people probably would not be seeking advice from the likes of me.

CHAIR: Fair point.

Mrs STUCKEY: Ken, can I congratulate you on your presidency of the Law Society—the quite august body that it is. Mr Stevenson, you have mentioned the issue of court resources. I am wondering whether you support the proposal from the Queensland Council of Unions for a separate industrial division of the Queensland Magistrates Court. If so, could you elaborate on that?

Mr Stevenson: There are different models available—whether it is generally increasing resources to the Magistrates Court or having a division of the Magistrates Court with speciality in this area or whether it is better to have that resource within the Industrial Court. In terms of models, having the Industrial Court, which hears appeals from the Industrial Relations Commission, as the body makes some logical sense. In some ways it is six of one and half a dozen of the other, to be honest.

Mrs STUCKEY: The Queensland Council of Unions has also recommended introducing new criminal offences into the Queensland Criminal Code. What are your views on that recommendation? Can you explain some of the existing criminal laws that relate to any deliberate action by a corporation?

Mr Stevenson: I can probably only be of limited assistance on that issue. As I understand it, the society has not taken a position one way or the other in terms of criminalisation. The society represents a broad church of solicitors, as you would appreciate. There are certainly arguments for and against. Ultimately, for me, from a practical point of view, it is a question of whether throwing a few dodgy employers into jail will create a significant deterrent effect for everyone else. I guess the answer to that question from the Law Society's point of view is that we do not know. Maybe it will; maybe it will not.

Our point is that whatever happens in that space is not likely to solve the vast majority of underpayments. I guess there is a danger in being seduced by the attractiveness of criminalising certain conduct. I am certainly not here saying that that should not be done, and nor is the society. For the vast majority of employees with underpayment claims and entitlement claims, I suspect that is not going to greatly assist. Doing the hard yards in terms of addressing resourcing and making it easier for people to pursue these matters themselves—practical steps such as simplifying forms and greater education for both employees and employers—is probably going to have a better effect long term.

Mrs STUCKEY: Would you contend, though, that there may be a gap in the existing criminal law that would need to be addressed if we were going to go down this path?

Mr Stevenson: I do not think I would like to express a particular view about that.

Mr Taylor: We could take that question on notice and perhaps refer it to our criminal law committee for some expert advice, if that is possible.

Mrs STUCKEY: I would be grateful if that could be done.

CHAIR: Are you taking it on notice?

Mr Taylor: Yes, and we can refer it to our criminal law committee.

Mr HEALY: You have made a great submission. My question is very similar to that asked by the deputy chair. I want to flesh this out a little. Criminalisation was not discussed in your submission. Are you aware of anywhere around the world where there is that sort of legislation? What is the impact of it? Are we facing something brand new here? I would be surprised if we were. I would have thought that somewhere around the world that would be the case.

Mr Stevenson: I apologise that I cannot answer that question in terms of broader research. There certainly seems to be a general trend towards the criminalisation of extreme conduct of any sort. We only need to look at the accident in Italy yesterday and the deputy prime minister of Italy talking about finding the names and surnames of people to prosecute. The continental legal system is obviously a little bit different to our common law system. Unfortunately, I cannot answer that direct question.

Mr HEALY: As the peak professional body for Queensland legal practitioners, do you have a sense of the types of wage theft and cohorts that may be overrepresented in Queensland's Federal Circuit Court in relation to wage matters? You spoke well about that earlier.

Mr Stevenson: Certainly the vulnerable worker sector, if I can use that general term, has the greatest representation that I see. One of the previous speakers was a chef. I see quite a few cases in the areas of hospitality, restaurants, cafes, accommodation in terms of hostel and tourism operators, commercial cleaning operations and building—the general vulnerable worker sector, if I can put it that way. It is not those areas exclusively, I might say. Certainly that is my sense of where the majority of matters are. There are younger workers but also older workers who feel that they have not been able to raise issues. They might work for an employer for many years and then their employment comes to an end and that is when they feel more confident in looking into an issue.

Mrs WILSON: From your experience, what amounts make up the claims that you see? Are they normally under or over, say, $20,000?

Mr Stevenson: The majority that I see would be under $20,000, but increasingly you would see them around that limit. That limit has been in place for quite some years now. At a state level, the society was successful recently in having the remuneration threshold at which you could bring a claim under the employment claims process raised to be indexed in accordance unfair dismissal thresholds. I was only thinking this morning that the actual limit of that claim has not been raised for quite some years. A number of the claims that I am seeing do fall around that area and above it. There would be some justification, in my view, for some indexation or consideration around the increase of the minor employment claim limit both at a state level and at the federal level.

Mr BROWN: In your submission you outline some pretty shocking figures for Queensland with regard to the number of judges per million residents—0.4 and maybe up to a maximum of 0.6 if you include Judge Turner. Why do you think the federal government is ripping Queensland off in terms of industrial relations judges?

Mr Stevenson: I really could not say myself. I certainly would not like to be a Federal Circuit Court judge. They have an awful lot of work to do. The president may wish to make a comment, but I cannot speculate about that.

Mr Taylor: We have only made comment on the actual figures. With respect, I do not think it is our position to speculate on why that would be so. We highlight that figure which, as you say, is quite startling.

Mr BROWN: In your submission you state that our state industrial courts are not eligible state and territory courts under the Fair Work Act. Is that correct?

Mr Stevenson: As I understand it, the Industrial Court of Queensland is not specifically named as an eligible court for federal proceedings. When we talk about private sector wage claims we are talking about what are essential federal matters nowadays—

Mr BROWN: Is one of your recommendation that Queensland make a recommendation to the federal—

Mr Stevenson: Yes, I think it is. At the moment those matters can be brought in the Magistrates Court. That is, generally speaking, the standard commercial process with all of the downsides that has. The employment claims process through the Magistrates Court is there, which is good. There would be some benefit to having the Industrial Court as an eligible court as well.

Mr BROWN: We have the Federal Circuit Court, the Federal Court, the Magistrates Court, the Queensland Industrial Relations Commission and the Queensland Industrial Court. If I were a 17-year-old hospitality worker, what chance would I have of navigating that myself?

Mr Stevenson: It is difficult. It is not directly on point, but I wish I had a dollar for every time someone has confused the Fair Work Commission with the Fair Work Ombudsman. Everyone says, 'I just phoned Fair Work.' I say, 'Did you phone the ombudsman?' I certainly appreciate that. Unfortunately, I do not think it is as simple as saying that we will just have one court in Queensland that has jurisdiction for these matters. I think having the Industrial Court as an eligible court would be a good idea if there were proper resourcing and it became the main place where you took these sorts of matters rather than having both it and the Magistrates Court as principal places. We are simply saying that we have the Industrial Court. It is an industrial court. It deals with matters coming from the industrial commission. In terms of a model, that is not bad place to park it.

Mr BROWN: I am a 17-year-old hospitality worker who is being ripped off. I go to the Magistrates Court. They send me to the QIRC for mediation. Is that correct?

Mr Stevenson: For a conference.

Mr BROWN: Are you saying that 50 per cent of times bosses do not show up?

Mr Stevenson: I am not saying that they do not show up. Sometimes they do not. In terms of reaching a resolution of a matter, I was making that reference more in terms of the federal system than the state system, because at the federal level the Fair Work Ombudsman conducts—this is pre court, if I can put it that way—a phone mediation conference if the employer is prepared to agree. The Fair Work Ombudsman is the government agency.

If that does not work then it is up to the person to bring their own proceeding. If they bring an employment claim under the Magistrates Courts Act in Queensland then there is the hurdle at the moment of completing the initiating form, which is not intuitive—and to some extent that is a reflection of the jurisdiction under their legislation. The first step is referring the matter to the state Industrial Relations Commission for a roundtable conference. Most of the time—and this is, again, only my sense of it—employers would go to a conference in the state Industrial Relations Commission because they are required to attend, as I understand it, and it is an in-person roundtable conference with an industrial commission that has authority. It is a lot harder to say no in that sort of environment than when you are just on a phone conference with a conciliator from the Fair Work Ombudsman's office.

Mr BROWN: Under the state legislation now, we do have jurisdiction to require the employer to be at that conference. Is that correct?

Mr Stevenson: To tell you the truth, I would need to check the legislation to be able to give you a definitive answer to that. Certainly I am not aware that employers customarily do not go to a conference in the state commission.

Mr BROWN: We need to check that. Are you able to take that on notice to see whether we need to make legislative changes to require the employer to attend?

Mr Stevenson: We can check that relatively quickly.

Mr BROWN: Thank you. Again, in the situation of a 17-year-old sitting in the conference and the employer does not show up, it is pretty hard to get the employer to engage from there. In your submission it is about trying to get access to resolutions for these types of workers and simplifying that process?

Mr Stevenson: Absolutely. The LawRight submission has a number of case examples of those sorts of matters. At least at a state level the process that is there is, relatively speaking, efficient. There does need to be some, in our submission, clarification of the legislative basis in the sense that it is not 100 per cent clear whether purely statutory or award based claims can be used in that process. The initiating form really needs to be reworked. The whole publicity of that avenue could be improved, and reference is made to that in the submission.

Mr DAMETTO: We are talking about young people or elderly people—people who may be in a financial hardship situation where it is quite expensive for them to engage solicitors or lawyers to chase up wage theft. Would you suggest that there be a better system implemented or perhaps to give the Fair Work Ombudsman more teeth when it comes to chasing up this money so that those people do not need to engage solicitors or have legal representation to chase up $500 to $20,000 in the Federal Circuit Court or the Magistrates Court in Queensland?

Mr Stevenson: As I understand it, the level of assistance given by the Fair Work Ombudsman has varied over the years. When the Fair Work Ombudsman was first established, it was quite proactive in acting on behalf of employees. That, to my knowledge, seems to have tailed off a bit over the years—whether that is due to funding or other issues I do not know—to the extent that now, by and large, there is assistance with voluntary mediation. The Fair Work Ombudsman does some high-profile prosecutions, for want of a better word. Certainly, on the one hand, greater funding for enforcement agencies would go a long way, but there is the perennial problem of funding versus outcomes. Inevitably, I suspect that public enforcement is only part of the answer.

In terms of making it easier or having more resources for people to help themselves, that exists at a number of levels—firstly, in knowing to begin with what their entitlements will be. I suspect that a lot of workers do not know what their entitlements are. I am a specialist workplace relations lawyer and I must say that I was struggling the other day trying to work out what an apprentice should be paid under a particular award.

Mr DAMETTO: I can agree with that to some extent. In the past I have been an employer with my own small business. I was looking at what I had this person doing for me and I was going through the list trying to work out how we classify this person because it was quite a varied role. It was quite difficult, so I can understand what you are saying.

Mr Stevenson: Those are practical issues. I am a motorcyclist in another life. You might say that if someone came up with the idea of riding a motorcycle now it would be banned completely. That is perhaps a poor analogy.

Mr HEALY: No, it is a good one.

Mr Stevenson: We are subject to our history of evolution of employment law. Industrial awards are a large part of that, as is enterprise bargaining. The award modernisation process at both federal and state levels has helped enormously over the time that I have been a practitioner. There is still a degree of sophistication required in being able to interpret industrial instruments and know their history. I am not saying that is good, bad or indifferent. That is just the way it is, and it is probably too difficult to change that in the short term. Certainly, helping employees to know, firstly, what their rights are and having a system—I think, at least in legal terms, a lot of the general protections provisions in the industrial legislation now help employees to have the confidence to raise issues, at least knowing that there is some legal backup. Having simplified avenues for them to take proceedings themselves would go a significant way.

Mr DAMETTO: I agree.

Mr Stevenson: That is certainly not the whole answer, but it would go a significant way.

CHAIR: I have two supplementary questions and they are both in relation to your submission. On page 7 you make the point at paragraph (b)—

There is no good policy reason for the continued strict division of responsibility between the Department and ATO.

This is with regard to superannuation. Your comment there seems to be consistent with and reflective of the Senate Economics References Committee report *Superbad—wage theft and non-compliance of the Superannuation Guarantee* in that those divisions are causing issues—and unnecessary issues, I think—for employees who are seeking to recoup those entitlements. Can you please speak to your submission in that regard?

Mr Stevenson: I do not know that I personally can say an awful lot about that. I was not the drafter of the submission. All I can say from my own experience is that there are limitations on the ATO's abilities to act to recover superannuation. Generally I say to clients, 'It won't happen overnight but it will happen.' The point that I think the submission is making is that a more whole-of-government approach to the issue would be of advantage. I am sorry, I do not think I can expand more on that. If you would like some further commentary, we can arrange for that.

CHAIR: It would be good, because the point made in your submission is that superannuation should be added to the group of entitlements that are recoverable through the FEG scheme.

Mr Stevenson: Yes.

CHAIR: Superannuation—again, we had a hospitality worker who spoke to it earlier—may be the lesser seen entitlement because it is not the immediate money you pay your mortgage with or buy your food with, but I think it should not be forgotten. Certainly, in my view, it is undermining and leading to some issues in regard to poverty for employees later on. I would very much appreciate more clarification from whomever drafted that. Could you take that on notice?

Mr Stevenson: Thank you.

CHAIR: On page 8 of your submission under 'Practical tools for enforcing entitlements', in paragraph (c) you mention—

> There is currently very little practical recourse available to litigants in the event that their employers or their officers obfuscate or mislead the Court in the course of enforcement hearings.

Could you speak to that, particularly your concern around court registrars rather than judges?

Mr Stevenson: The practical point is that it is one thing to get a judgement, which is hard enough, but a judgement at the end of the day is a piece of paper. You then have to enforce it. Enforcement proceedings for any debt are notoriously difficult. One of the first options is to call the business owner in for an oral examination before the court of what their affairs are. I think the point the submission is making is that those examinations are traditionally run by lower level judicial officers. This in no way is a criticism of them. Particularly in the more serious cases, though, the court system is dealing with employers who have a history of knowing how to play the system, dare I say, and it is all too easy to get answers that do not really address the point of the questions. I think that is the point being made by the submission, and having perhaps higher level judicial officers dealing with those matters might be of benefit. Again, it is a time-cost exercise ultimately for the funders and the government. On a day-to-day basis, it is all too easy for obfuscation and delay to occur. I am speaking from my experience more of the employers who are intentionally playing the system.

CHAIR: I think the concerning thing is, as you say, for someone to even get to that point to then still be frustrated by the process.

Mr Stevenson: I do not know what the figures are, but I suspect very few wage claim matters where people are representing themselves get to that stage.

Mrs STUCKEY: Mr Stevenson, the first page of the submission talks about recognising the vital role that the Fair Work Ombudsman and the unions play in the enforcement. You have also recognised the difficulty with getting some of those enforcements. Your submission states that 'it is necessary for the Fair Work Ombudsman and unions to deploy their limited resources in a targeted way'. Does that indicate that it is not being done at the moment and it could be done better? If so—I realise you have made some suggestions in here—in a nutshell, would you be kind enough to share that?

Mr Stevenson: The practical point is that, and it is almost trite to say, the FWO has a certain amount of resourcing. In some ways it is also trite to say—and I certainly hear these stories myself from clients who come to me—that unions do not have the funding to do everything as much as they might wish to. I think the point is being made—and it is more a common-sense point than an observation, if you like—that those bodies clearly, you would think, would need to act in a targeted way to make best use of the money and resources that they have available. It is not making a particular argument or anything of that nature. It is more just a simple observation that is being made.

Mrs STUCKEY: I think it is a very valuable one. Rather than having sides fighting each other and you have the poor old claimant in the middle—the person who has been dudded—I think it would be great if we came up with some really good resolutions to not enforce but to see a way forward where we do target those resources better.

Mr HEALY: Rob, this question is motivated out of the Queensland Council of Unions' submission. In terms of access to data, such as pay rates and information to be able to mount a case—you have been active in this area—has it been difficult or has it been easy? Can you give us some examples? I have no doubt it is varied. I am interested to hear what your experience is in that area. Recognising the importance of that data, I am interested in the access that you get.

Mr Stevenson: It certainly is important.

Mr HEALY: I would have thought it would be the foundation of the case.

Mr Stevenson: Indeed, you are quite correct. It is the foundation. Sometimes it does not exist. There are legal requirements to keep time sheets but sometimes it just does not happen. One of the points made in the submission is to raise the potential for a reversal of onus sometimes.

From the employee's point of view, a lot of the time they might not have their time sheets or there might not be time sheets. Getting them from the employer is not always an easy thing. There is an ability to request them under the fair work legislation, but forcing the employer to do so is very difficult in the absence of legal proceedings where directions or subpoenas can be issued. One does one's best to do calculations based on whatever records the employee does have. A lot of the time we are talking about pay slips, but even then quite often pay slips are not handed out or they are on a central system that you can access if you want to.

A lot of off-the-shelf bookkeeping systems do not reflect the requirements of record keeping for legislative purposes so you do the best that you can. Sometimes employers have not been diligent in keeping those records either—again, for whatever reason. Ultimately, given that for most of these matters you are talking about award based entitlements and some national employment standards under the Fair Work Act, documentation, as you say, is the foundation but it is difficult to get pre action. The Fair Work Ombudsman of course can and does make requirements of employers, but in terms of employees themselves there is no simple, enforceable way pre action of getting that documentation. The bottom line is that sometimes it does not exist. I do not know if that helps.

Mr HEALY: No, but it confirms that the data is essential, as we have both acknowledged.

Mrs WILSON: We have spoken about industries and work environments where we are seeing wage theft. Are more wage theft claims being made in one age group than other age groups or is it across-the-board? I am interested because we are talking about education and whether we have missed out on educating people somewhere. I have children who work in hospitality. Have I educated my children enough so they are aware what they are getting? I am trying to fill in the gaps there.

Mr Stevenson: I do not have any quantitative data for you. I think I previously made comment about various vulnerable worker sectors in the economy, and that is where this is the main problem. Greater education in society about what are the basic rights and models of work available would be of assistance, but ultimately I guess you are always going to have this issue of someone needing some money. These things are supply and demand based, ultimately. Someone who needs money is not terribly concerned about whether they are being paid correctly until generally the relationship breaks down and they start looking at it then. In my view and from my experience, there is widespread ignorance of even the basics of employment law, if one can call it that.

Mrs WILSON: Thank you.

CHAIR: The time allocated for this session has expired. The secretariat will liaise with you directly regarding the due date for your responses to questions on notice. Ken, Rob and Kate, thank you very much for your time here today. We appreciate that you are all very busy people. Also on behalf of the committee can I say that the Queensland Law Society always makes submissions and they are always highly valued, so thank you very much.

Mrs STUCKEY: Chair, can we confirm that there were two questions taken on notice?

CHAIR: There were three questions taken on notice. The secretariat will be in touch.

Proceedings suspended from 11.04 am to 11.18 am.

SCOTT, Mr Ian, Principal Lawyer, JobWatch Inc. (via teleconference)

CHAIR: The committee will now resume. I welcome Mr Ian Scott, who is joining us today via teleconference. Good morning, Ian.

Mr Scott: Good morning.

CHAIR: Ian, I understand you are the principal lawyer with JobWatch Inc.

Mr Scott: Yes, I am the principal lawyer with JobWatch, which is an employment rights community legal centre based in Victoria. We operate a telephone information service for workers including employees and people who may be self-employed but may be really employees. That service operates in Victoria, Tasmania and Queensland.

CHAIR: On behalf of the committee, thank you for taking the time to make a submission to our inquiry and for making yourself available. Did you wish to make on opening statement before we open up for questions?

Mr Scott: I am happy to make a short one, yes. As I said, JobWatch is an employment rights community legal centre. We have our telephone information service. We also have a small legal practice—that is just for Victoria—and we do community legal education and law reform submissions like the one we have filed with you. Generally speaking, we support any measures that provide access to justice for vulnerable and disadvantaged workers and that disincentivise employers from doing the wrong thing.

CHAIR: The committee will now move to questions. I know it is a little more difficult for you because you cannot see us, but I will introduce members as they ask questions. As the secretariat has advised you, my name is Leanne Linard. I am the chair of the committee. Ian, can you clarify how your funding works—who you are funded by and to do what? Is it based on hours or calls? Can you provide us with some clarification, please?

Mr Scott: Yes. We are partially funded by Victoria Legal Aid and partially funded by the Fair Work Ombudsman. We have some small grants along the way for special projects and things like that. We are a not-for-profit community legal centre. We are part of the Victorian Federation of Community Legal Centres, which is part of the National Association of Community Legal Centres.

Off the top of my head—it is not my department—we receive approximately $700,000 a year in total and the Fair Work Ombudsman provides approximately $400,000 to $450,000 of that. We started our telephone information line taking calls from Queensland and Tasmania at the start of 2017. The funding was not increased very much to take on those extra states, but there is a very high intake of calls to JobWatch from workers in Queensland and it is ever increasing.

CHAIR: Ian, could you speak to that? What I am trying to clarify in my mind is that the Fair Work Ombudsman has an important role in educating and informing workers and employers as to the requirements under the act and their role. One of the criticisms that has been labelled certainly through this inquiry and submissions is that, firstly, employees feel that when they call they are largely left on their own and that it is more reactive than proactive. Can you speak to that and your experience with Queensland in terms of the comment you just made about the large number of calls?

Mr Scott: Yes. I am on the record as being funded partially—approximately half of our funding—from the Fair Work Ombudsman. The Fair Work Ombudsman is in an interesting space because it is neutral. It advises employers as well. Employers can call their information line—the fair work information line.

From JobWatch's perspective, when an employee or a worker calls there are myriad problems. The fair work info line is very well placed to advise a caller what the relevant modern award is and what their minimum pay should be, but then the caller will usually say, 'And I am being bullied. What if I am dismissed? How should I do a letter of demand?' The Fair Work Ombudsman cannot be in that space of advising that employee how to go about that with their employer because the employer is entitled to call the fair work info line. That caller would be referred to JobWatch most likely, and JobWatch would take them through all their legal options including how to deal with bullying, what the time limits are if they are dismissed and what the strategy might be. They have six years to file in court, so maybe they do not need to make a claim against their employer at the moment. They can take their time, get a new job and then start a case. Does that answer part of your question?

CHAIR: It does, but I am also interested in trends. You mentioned that you have a large and growing demand from Queensland. Could you speak to that and the nature of the calls you are receiving?

Mr Scott: The nature of the calls is the same as the calls that we are receiving in Victoria. My submission has focused on underpayments, but people who are calling about those underpayments are also calling about myriad other workplace issues. We are getting more and more calls from Queensland. I think that is possibly because the nature of our service is very good. We can handle any employment law related question through our phone service. I think it is getting more and more popular because it is a good service and I guess the problems in Queensland are the same as elsewhere.

CHAIR: Is it your sense from those calls that many of the young people or people generally who are calling you—I know you mention the different cohorts who use your service—are in the main calling about matters which were unintentional or were intentional on the part of the employer?

Mr Scott: That is not a statistic, unfortunately, that we would take down from our calls—whether underpayments were unintentional or intentional. That would become clearer if the JobWatch legal practice were able to take the case on. I am sorry, I do not have our statistics about the age groups that are calling, but it would be predominantly younger workers, yes.

CHAIR: I am mindful of the time. I may have a supplementary but I want to let other committee members ask questions. Deputy Chair, do you have a question of Ian?

Mrs STUCKEY: Good day to you down there in cold Melbourne, Ian.

Mr Scott: Thank you for allowing me to telecommute today.

Mrs STUCKEY: Yes, it is great. I want to continue with what the chair was asking in terms of trying to get a percentage of clients who are Queenslanders. You have said in your submission that you have provided tailored legal information to about 3,914 of them. I think you also mentioned that you had only been supplying the service to Queensland since 2017; is that correct?

Mr Scott: That is correct, since 1 January 2017.

Mrs STUCKEY: Are you not able to give us a rough percentage of how many that is?

Mr Scott: I can. We can work it out now I guess. We respond to approximately 11,000 to 12,000 calls per year. That is around about a quarter, isn't it?

Mrs STUCKEY: Yes, roughly 25 per cent. Do you get any funding at all from the Queensland government?

Mr Scott: No. Our submission today is about access to justice for vulnerable and disadvantaged workers but, no, we do not get any funding from the Queensland government.

Mrs STUCKEY: Yet you look after a lot of our calls. You are obviously based in another state and you are dealing with employers and employees from those states. Are you able to elaborate—

Mr Scott: We do not assist employers. It is purely employees or worker rights.

Mrs STUCKEY: Thank you for that correction. Can you elaborate on how other state jurisdictions deal with the issue? Are people saying that they have tried a service in their home state and were not satisfied or were not happy and they have come to you, or is there some other explanation perhaps?

Mr Scott: Sometimes. Our telephone information service is open to every worker in Tasmania, Queensland and Victoria. It does not matter if they are a professional, and it does not matter if they are a member of a trade union or not. We are open to everyone. That is different to our legal practice here in Victoria. To be an ongoing client we have a checklist, if you like—which is basically that the worker has to be vulnerable and disadvantaged and have a good case, and all of these aspects have to be examined—but our information line is open to all workers.

Sometimes we get people who call and say that their union is not helping them. No-one ever calls and says their union is helping them. No-one ever calls and says, 'My employer is great. I don't have any problems.' In Queensland, Victoria and Tasmania, most of our calls are referred to us by the Fair Work Commission and the fair work information line. Together they make up approximately 50 per cent of our referrals. That does not mean that they are dissatisfied with them. It means that, for example, if they have gone to the Fair Work Commission or called them to try to challenge their dismissal, the commission will say, 'You can file this form or this form, but I can't tell you which one to do.' That would be legal advice and the registry cannot do that, so then they refer them to us for that tailored legal assistance.

Mrs STUCKEY: Thank you. You have answered the question I had in terms of how you get all of those referrals.

Mr HEALY: Good morning, and thank you very much for your time today. There are some pretty valid points in your summary of recommendations, but I also notice in your submission you said—

… JobWatch's opinion is that the FWO does an excellent job as regulator with the resources at its disposal ... the result of FWO's inadequate budget—

We have heard from a few other people this morning in relation to the resources. Can you give us a few examples of where you think they are from a resources perspective, please?

Mr Scott: It is not really my space to understand that. The person I worked with on our submission, Liam McCarthy, has put together—and there should be a reference there—that they did have some sort of effective drop in their overall funding through that period. I think it actually might be on the—

Mr HEALY: It is. My question to you is more around the practicalities of that from your perspective.

Mr Scott: That is what I was about to say. My submission talked about how many workplaces there are in Australia and how many employees. That seems to be obviously a high volume of potential problems to deal with. For example, we have come across an employer down here recently where we have 13 clients who have been underpaid and we have referred them to the fair work inspectorate. They have taken that on board and they are currently looking into it. They have not started an investigation yet but we are hopeful they will. They have their own internal policies, I guess, about when they will prosecute and when they will not prosecute. It is the same for us at JobWatch. We have three lawyers and 11,000 calls a year. It is not possible to help everyone, unfortunately.

Mrs WILSON: Thank you again for being on the line with us. You mentioned simplifying the Magistrates Court rules and processes as a recommendation in your submission. Earlier today we heard from the QCU that they want to see a separate industrial Magistrates Court established. Would you prefer that option, because it is going to be quite costly, or perhaps the refinement of the existing process, as you have already suggested?

Mr Scott: Not having practised in Queensland, I am not across all of the Magistrates Court rules and processes that I alluded to. That is why it was a bit vague, saying to improve access to justice through waiving the filing fee, making service of documents easier or maybe through electronic means, which I should have mentioned probably.

As a general idea, the lawyers here have been talking about that for a while too. Putting the cost aside, we would like to see an employment tribunal. In Victoria we have the VCAT and in Queensland you have the QCAT, where people can come and represent themselves. The rules of evidence do not apply. They can tell their side of the story and the member would assist with what they are trying to prove and say, 'This is the section. How do you prove to me that you are this classification in the award?' The answer might be, 'Because I supervise someone.' The process can be streamlined and made easier, and people can access their minimum entitlements.

There is a resourcing issue there. Traditionally these money claims are in the common law courts, but your QCAT does have the power to hear unpaid contractors' fees claims, so it would be kind of aligning it in that sense and making it simpler, quicker and more streamlined. That is the goal. That is the idea in an ideal world.

Mr BROWN: Ian, I want to flesh it out a bit more. You talk about wage theft being a business model. Correct me if I am wrong, but there is a six-year statute of limitation for an employee to claim?

Mr Scott: That is right. It is six years from the first underpayment. If their pay period is fortnightly, for example, and they are underpaid $100 in that fortnight, the six years is running from that date. To put it to you another way, they can only go back in time six years from when they file in the court.

Mr BROWN: Let us say I own a hospitality business and I have three chefs out the back rotating through and eight staff on the ground. I employ them all on one level lower than they should be on, and I put that money aside for what I take. What are the chances of me being pulled up by the Fair Work Ombudsman? There are 2.2 million businesses out there and I think there are about 73 inspectors. What are the chances of being inspected in the six years?

Mr Scott: The odds would say it is pretty low, isn't it? It only takes one of those employees, though, to call JobWatch, for example, and be made aware of their rights and then it is a house of cards. As I have said in my submission, employees only really call when there is another problem. Let us say those employees were really happy. They got a free meal at lunch time and they had drinks after work; it is a happy, family run business. They are unlikely to actually seek advice. It is when they get dismissed or they complain about bullying or something like that, and then we will say, 'How much

are you getting paid?' We will then do a rough check and say, 'You should call the Fair Work Infoline and check that because that sounds pretty low for your job,' and on it goes from there. It is a strange phenomenon that if the employee is otherwise happy they will not go and check whether they are being paid properly or otherwise.

Mr BROWN: So the boss gets away with wage theft if that employee does not speak up.

Mr Scott: That is right.

Mr BROWN: Even then, let us say you have one employee who speaks up about it. They have left the establishment, and you then go into a private settlement so they cannot talk about it to other employees. Effectively, those private settlements are below what they should be owed so the boss is also ahead in that scenario.

Mr Scott: That is a common outcome. One of the problems with the process is that, at the mediation stage with the Fair Work Ombudsman, employers will sometimes say things like, 'I don't care if it was $26 an hour. You weren't worth it. I'll offer you half of what you are owed.' The employee has the option then. They can have the money in their hand within seven days or they could have a four-month court case, so, yes, they do often settle for less than they are entitled to.

Mr BROWN: I think there have been only 442 cases brought to court by the Fair Work Ombudsman in five years. What I am trying to get at is the chance of you facing a penalty greater than what you owe. Let us say you get caught out in the six years, that you are unlucky enough to have one inspector come through. I notice there was a blitz in the hospitality industry over three cities, including Glebe and Fortitude Valley, and there was one litigation filed—and that was a blitz. You will still be ahead if you—

Mr Scott: Sorry to interrupt. I do agree. The Fair Work Ombudsman's policy seems to be that 'if we can catch a big fish and get all the penalties against them, the little fish will all be scared'. I do not know if that is working. I cannot speak for them, obviously, but a policy change internally could be, 'Let's just get all of these little fish.'

Mr BROWN: If they are finding themselves that 72 per cent are not following their industrial requirements, you would be a mug to be paying the correct weight, because what is the likelihood that you are going to be caught? If you are caught, you just pay back less than or equal to what you owe anyway and you do not have to face court challenges.

Mr Scott: Yes, and there are disreputable employers out there who make that part of their business model. The shop over the road is doing the same thing and they are in competition for customers, if it is a restaurant, for example, so it is a bit of a race to the bottom in that respect.

Mr BROWN: I thank the bosses who are doing the right thing, but what I am saying is that you can easily have this business model and get away with it under the current system.

Mr Scott: In the current circumstances, yes, and then there is always insolvency and things like that as well.

Mr BROWN: Thank you.

Mr DAMETTO: Good morning, Ian. Thank you very much for attending today. My question is more to do with some of the cases that you take on and to give employees the confidence or not to pursue legal matters. In relation to the cases that you take on—and this is not a reflection on your ability to defend these people—how many of the people who take these sorts of things to court actually win their entitlements?

Mr Scott: There is a whole other area of law which no-one really likes talking about which comes after the case is finished. With underpayments, usually the employer does not have a defence. It is usually pretty clear what award classification level the employee should be. Sometimes that can be disputed but it is usually pretty clear. It is usually pretty clear when they have worked because they might have rosters, time sheets or at least text messages, emails and things like that. Obviously, sometimes the employer will say, 'No, you didn't work those days,' et cetera, but usually you can have witnesses who say, 'I worked with that person on that day,' or even customers if you want to go that far.

There is a high level of success in going to the hearing and getting an order in the employee's favour for the amount of the claim. In those cases, probably the employer has not showed up and then you are into the next stage which is called enforcement. That is what we were talking about briefly before, where insolvency issues arise. Sending the sheriff around to seize property when it is a business that has one computer or something is fruitless. Those employees are not in a position to commence insolvency proceedings. It costs thousands of dollars to get the ball rolling and there may not be anything in the end.

Mr DAMETTO: What mechanisms do you believe government could put in place to protect workers' rights in this instance, especially when it comes to unpaid superannuation?

Mr Scott: As you have probably heard today, most of Queensland's employees are in the national system along with the superannuation regime. In September last year the protecting vulnerable workers bill came in and that increased the penalties in the Fair Work Act tenfold. I think it is something like $540,000 or $562,000 now for a company and $120,000 for an individual where there are serious breaches of the Fair Work Act. That has not been in very long. It will be interesting to see how that plays out. I am not aware of any cases yet. Other than that, Victoria seems to be seriously considering the criminalisation of wage theft. That is obviously something the state government can look at. As I said at the beginning, JobWatch is in favour of anything that allows access to justice for vulnerable workers and disincentivises employers from doing the wrong thing. I think the criminalisation of wage theft is a serious step. It would be need to be funded properly and there are a number of other considerations to take into account. Other than that, I do not know. Just like any law, people break it.

Mr DAMETTO: My line of questioning is trying to find a solution to this major problem.

Mr Scott: Yes.

Mr DAMETTO: Thank you very much, Ian.

CHAIR: Ian, that brings our time to a close. On behalf of the committee I thank you for appearing via teleconference today from Victoria and for the written submission you provided to the inquiry. The committee appreciates it. I now welcome representatives from the Young Workers Hub.

BARKER, Ms Imogen, Founder, Young Workers Hub

dE ROOY, Mr Martin, Founder, Young Workers Hub

HAMBURG, Ms Katherine, Hospitality worker

LEMISAGELE, Ms Sivaiala, Food manufacturing worker

CHAIR: Thank you for your submission. We very much appreciate it. As young people in Queensland you bring a very important voice to this inquiry. I invite you to make an opening statement of up to five minutes and then we will open it up for questions.

Mr de Rooy: We would like to acknowledge the traditional owners of the land on which we meet today and pay our respects to elders past, present and emerging. My name is Martin de Rooy. I appear with Imogen Barker, and we are co-founders of the Young Workers Hub. We are joined by three young workers who will share their experiences of wage theft with you today. There are also several young workers present who join them in support. Imogen and I will provide brief opening statements and then we will ask Siva and Kate to tell their stories of wage theft. We will then invite any questions from the committee, followed by a private session with a young worker.

Our three key submissions today are: firstly, young people are more likely to experience wage theft; second, there is a need for young workers to understand their rights and entitlements at work through education; and, thirdly, current industrial laws have proved to be insufficient to address wage theft. A 2018 activities report by the Fair Work Ombudsman found that 60 per cent of businesses down the road from here, in Fortitude Valley, are not compliant with workplace laws. The same report found that compliance issues arose due to age and ignorance of where to get help.

Our submission refers to three instances of possible wage theft. The first is employers failing to provide pay slips in the prescribed form or at all. Kate will speak to this and describe how it affected her. The second is wage theft as a business model when it is ongoing and systematic and not an isolated incident. Siva's story relates to this. The most common form of wage theft is being paid a flat rate despite being legally owed overtime and loading. The last instance in our submission relates to the misclassification of young workers under the award or pay rates not increasing following a young worker's birthday.

Ms Barker: The enforcement of current laws does not deter wage theft and is more often than not complicated and inaccessible for young workers. Paragraph 20 of our submission details Caspar's story and includes a shocking account of intimidation by his employer which was designed to deter him from making any claim in relation to his situation. As these tactics operate on assumptions of ignorance and age, young people are a cohort of workers at higher risk.

The Young Workers Hub recommends that a separate legislative instrument be introduced to deal with complex situations in which wage theft can occur; for example, a young worker engaged by a host employer directly, a labour hire agency, a franchisee, an online platform or any other form of engagement. However, the mere existence of laws does not account for their enforcement. The stories of Siva and Kate are cases in point.

In order for wage theft to be stamped out across Queensland, young workers need to know their rights. The Young Workers Hub recommends that the Queensland government allow senior secondary schools and TAFEs to opt in to programs that educate years 11 and 12 students on their rights at work, noting that non-government schools and RTOs can also opt in. This will ensure that young workers like Siva, Kate, Molly and Caspar know what to do if they experience wage theft, bullying, sexual harassment or unsafe work. We would now like to welcome these workers to tell their stories.

Ms Hamburg: My name is Kate and I am 18 years old. Unfortunately, like many young Australians I too have had experience with wage theft. Last year I got my first job in the retail industry. In the 1½ years that I worked in that position I never once received a pay slip, even after I requested them. Before changes to penalty rates my weekend rate was cut from $23 to $16.62 with no discussion or consultation with me. Without pay slips I felt disempowered to question these wage changes or check if I was even being paid correctly. I know that I was underpaid at least $100, but I cannot prove in total exactly how much. The total lack of pay slips means that I have no proof of what my wage used to be. If I raise this with my employer, he can then claim that he was accidentally overpaying me and ask for that money back. To me, a culture of exploitation and disempowerment existed: the employer knew the laws but simply chose not to follow them.

To be allowed to treat their workers this way—in my case, for over a year and a half—with no consequences demonstrates to me an underpoliced industry that green-lights employers' abuse of their employees. As a casual worker I was really wary of the potential consequences of questioning my boss. Shifts could stop coming in and I would be without an income, so I was very fearful of questioning these changes. I know for a fact that my co-workers were also denied their pay slips. This led to the very real stress associated with losing my income combined with an overwhelming sense of injustice at being blatantly delayed my rights.

Ms Lemisagele: My name is Siva and I am 25 years old. I began working for my company in July 2016. In August 2017 I found out something was really wrong with how I was being paid. A union member came to my worksite and began showing us the award rate entitlements for food manufacturing workers. I was shocked: I had been underpaid more than $1.50 an hour. More than 400 people worked for my company, and it was clear that most of us experienced this massive underpayment. As more of us saw what we were entitled to, we began to realise that we had missed out on overtime rates and shift loading for working late into the night or early in the morning. Some of us worked 22-hour shifts. We all just thought this was normal.

My union was able to educate us on our entitlements as food manufacturing workers. Discovering how much I had been underpaid was a fight I could not have won on my own. I did not have the time to go through all my pay slips and time sheets from the past year to calculate how much my employer owed me, and I was not in a financial position to hire an accountant or lawyer to do it for me. Neither were my colleagues. The only problem was trying to get my records from my employer to the union without upsetting my boss and getting my shifts cut or losing my job, so a large group of us handed in pay audit forms that authorised the union to review all of our time sheets and pay slips.

My employer failed to provide our pay slips within the legal time frame and the company was taken to the Fair Work Commission. Once we were finally able to access our pay slips, the union calculated how much I had been underpaid during my time working for my company. I had been underpaid almost $18,000. I lived pay cheque to pay cheque. I had to take out loans to live on over the Christmas period and to attend my grandmother's funeral, but the struggle to get my employer to back-pay my colleagues and me continues.

There are no laws in relation to how long a company has to repay their workers money they are owed, so we have to keep fighting to receive the money that belongs to us. Prior to my union coming out to my workplace I knew very little about my entitlements at work and I never thought something like this would happen to me.

CHAIR: Thank you both for telling your story. I appreciate this could be an intimidating environment. We welcome you here and we also welcome the people who are here to provide you with some support. I do have some questions for both Kate and Siva, but I would like to ask you first, Martin and Imogen, about the Young Workers Hub. When young people become aware of potential wage theft, where do they immediately go?

Mr de Rooy: It depends on their workplace. If they have a presence at their workplace, someone who knows their rights, then they may know where to go. They can call the Fair Work Ombudsman or their union or they can go to a firm; however, a lot of workplaces do not have that structural support. In Siva's case, before the union was on her side she would have had no idea where to go. In Kate's case, after not receiving pay slips for a year and a half she did not know where to go. We think there is a really big gap in the education of young workers between knowing their rights at work and knowing where to go if they do experience something like wage theft.

CHAIR: Would you say that most young people would be able to access one of those avenues, or would you say that most young people would have no idea where to go if they were presented with this issue?

Mr de Rooy: Most young people have no idea where to go. They are not taught their rights at work formally, so unless they are told by parents or another organisation they do not know where to go. That is the case with the workers we have here today. Unless they are educated in relation to their rights at work and unless there are organisations in their workplace that can assist them then they do not know where to go.

CHAIR: Obviously you are both very passionate because you indicated in your opening statement, Martin, that the two of you founded the Young Workers Hub. Where does that passion come from personally? Have you experienced this yourself, or is it because of stories like we have just heard?

Ms Barker: When I got my first job I was 17 and I knew nothing about my entitlements. It was only a few years later when I told people about my experience of being paid in 15-minute blocks, so not being paid for the first 15 minutes and the last 15 minutes. One week I only worked three hours, and legally my employer had to pay me for a four-hour shift. They came to me the next week and said that I needed to work an hour for free because they had to pay me an extra hour for the previous week. I just accepted that. I thought that was normal. I thought that was what was expected. As I got older and learned my rights and learned a bit more about what everyone's entitlements were, it made me angry that that had happened to me. It also made it clear to me that this was happening to my friends and my family and that it was something that was quite endemic in our community.

Mr de Rooy: I have been a hospitality worker in Townsville and Brisbane. My experience in Brisbane was much worse. Because I did not know what the minimum wage was, what an award was and what youth rates were, I could not explain why I was getting paid more in Townsville and less in Brisbane.

CHAIR: You are much closer to having finished school than I am. There is no education currently to assist, inform and equip young people in this respect. What feedback would you give them?

Mr de Rooy: In our experience, schools focus a lot on careers, university and degrees, which is great, but they do not focus on jobs. A lot of senior secondary school students and TAFE students already have jobs. They are not being prepared for the jobs they currently have and they are not being prepared for the jobs they may have in the future.

CHAIR: I want to go specifically to point 39 in your submission on page 10. I would have to be honest and say that that statement was probably the most concerning statement of any that I have read across the submissions. It states—

> Put simply, there is a societal view that wage theft is almost tantamount to a rite of passage for young people in their first opportunities of employment.

That is a deeply concerning and distressing statement and a very broad statement. Is that how you honestly feel—that young people are that vulnerable and are being taken advantage of to that degree?

Mr de Rooy: Yes. In preparing our submissions for today we spoke to a lot of young workers—young workers who have been underpaid and young workers who have not been underpaid. The story that is told between those workers is, 'What is your story? Did you receive pay slips? Neither did I. Were you underpaid? So was I.' The conversations that we have been having in the lead-up to submitting our submissions definitely show that there is a societal view that wage theft is to be accepted, particularly in hospitality and retail industries and particularly among young workers.

CHAIR: I cannot speak on behalf of anyone else. It is certainly not a view that I share at all. I think it is really distressing and concerning. Some submissions have made the point that wage theft is not a significant issue. You would be aware from your submission addressing the terms of reference just how prevalent wage theft is. Certainly what you are saying here today and others have said is that it is prevalent, particularly in cohorts such as young people in Queensland. Other employer associations would say that, in the most, it is not prevalent and that when it occurs it is an issue of a misclassification or an honest error. Has that been your experience?

Mr de Rooy: In our experience, wage theft is very difficult to measure. The Fair Work Ombudsman has only so many resources that it can use. Its audit of Fortitude Valley is useful for the inquiry and very important work, but Queensland is bigger than Fortitude Valley. If we were to go to Cairns or Townsville, where I am from, we would say that wage theft in the regions is not measured. The statistics that we have right now are shocking. The statistics that are unreported could be even more so.

Wage theft by its very nature often goes unreported, because unless workers know what to do they cannot pursue the claim. If they are not encouraged to pursue the claim, it does not show up in our statistics. The statistics that we referred to in our submissions are what we have available to us, but there is a lack of organisations out there that are able to measure those statistics. As the hub continues to operate throughout Queensland and grow, hopefully, we will be an organisation that can measure those statistics and show that wage theft will get better.

CHAIR: Sivaiala, you mentioned that if the union had not become involved in your matter you probably would not have been aware of it. If the union had not been involved in working with you, where do you think you would be now? Would you have brought it up?

Ms Lemisagele: Because I came from another country, this was my first job in Brisbane. I would not have a clue what goes on. I started on $16 where I came from but in coming here it was $22 an hour, which was big to me. I thought it was normal because it is big money for me. I thought everything was normal. I am working hard—at least 60 hours a week just to have my target that I need. Then the union came in. That is when I learned that I was paid differently. It was a massive gap from what I am meant to be owed hourly. I learned that I am entitled to something else instead of just $22 an hour.

When I used to leave home the sun had not come out, and then I would come back home and the sun was down. I would work really long hours. I never had a 10-hour turnover. Sometimes when I finished work I would come back home and have a shower and then have an hour sleep and then go back to work, because I was rostered on.

CHAIR: Just to clarify, because you have answered the first part of my question, if the union had not been involved in your case in helping you to advocate to your employer, would you have approached your employer? Do you feel that you would have been able to recoup that money?

Ms Lemisagele: No, I would not, because I would not have had the guts. It is my job. It is my only income that I am getting. I know that if I would have spoken to the boss about it I would have lost my job already.

CHAIR: Thank you very much.

Mrs STUCKEY: The chair has already spoken briefly about the recommendation in the submission that your program be taught in Queensland schools to years 11 and 12 students. What conversations have you had about this proposal with the education minister?

CHAIR: I do not think that is directly relevant. I think you could talk about the issue generally, but the conversation does not have relevance to the terms of reference.

Mrs STUCKEY: Have you had any conversations with the minister?

Mr de Rooy: We have not met with the minister. As you know, the minister's diary is public. We have been speaking with many stakeholders—teachers, young people like us, former students—to make sure that our program is the best it can be. We are really excited about our program of going to talk to young people and students. We think it will make a real difference to ensure they know their rights at work. That is what we have been doing.

Mrs STUCKEY: Does that mean that you have not met with the department either?

Mr de Rooy: Correct.

Mrs STUCKEY: Would you be able to provide to this committee a copy of the program that is proposed to be taught to schools? I think it would be really helpful if we could have that.

Mr de Rooy: We are currently developing our program. As soon as it is public I will notify the committee. I am very happy to meet with you about the program and ensure that you know what we want to talk to students about, which is their fundamental work rights. I can go through the program with you and get any feedback on the pilot draft program.

Mrs STUCKEY: Just to get this clear, the program has not been finalised yet?

Mr de Rooy: Correct. We have not released a public program. We are still developing the program and we will release it when it is ready.

Mrs STUCKEY: When might that be, do you think?

Mr de Rooy: Quite soon.

Mrs STUCKEY: The Young Workers Hub is owned and operated by the Queensland Council of Unions; is that correct?

Mr de Rooy: We operate with the support of the QCU. We are young people.

Mrs STUCKEY: Financial support?

Mr de Rooy: General support. We are young people talking to other young people about their rights at work and we are run out of the QCU.

Mrs STUCKEY: Specifically, how does your submission differ from the Queensland Council of Unions' submission?

Mr de Rooy: Our submission differs because we are young people. Ours differs because we are bringing young workers to you. I am not sure if any other organisation has made submissions to the inquiry that brings young workers to you. Considering that wage theft affects young workers more

than any other cohort of workers, we think it is really important that we have young people in front of this inquiry and in front of the committee—so that you can talk to them and ask them about their experiences of wage theft.

Mrs STUCKEY: Thank you.

Mr BROWN: If I am doing 12 years of schooling plus prep, I want two things: I want a job or I want to start a business. There is no education about how you run your business with the right industrial framework or once you are educated and you get a job. Is that the current situation, in your view?

Mr de Rooy: Absolutely. The current situation in our view is that young workers are not taught their rights at work. Learning rights at work via osmosis is not possible. We think young workers definitely need to be taught their rights at work in TAFEs and schools. Similarly, if those young people would like to run businesses, this will be helpful for them as well.

Mr BROWN: Yes, because employer groups like the National Retail Association—and we have heard your story about retail—want greater education as well.

Mr de Rooy: Absolutely.

Mr BROWN: It seems to me that there is a gap. There is the education to get your career, but once you have a career or start your business there is no precursor to that.

Mr de Rooy: Absolutely. We note the National Retail Association's submission that education programs need to be increased for young people.

Mr BROWN: I do not know if you have witnessed it yourselves in your workplace but, Katherine, if you steal from the till you could be faced with 10 years imprisonment. You indicated to your employer, 'You are doing something wrong. You are defrauding me out of my pay,' and they still ignored it. Do you feel that the power relationship was just too great for you to address that fraud?

Ms Hamburg: Absolutely. There is a complete imbalance in that relationship. Most commonly, the employee is pitted against the employer in demanding their rights. That is the person who determines when I get my next shift, if I get my income. If I am labelled a difficult worker, I lose my income. There is a lack of support in going up against your employer to demand what you know your rights are.

Mr BROWN: You would not go up personally by yourself, but even when you had the whole collective of your workplace you were still having trouble getting the money that you were rightly entitled to. Is that correct?

Ms Lemisagele: Yes. They made an agreement that we get paid. They cannot pay us in bulk, but they are paying us. They made us sign a contract that they will be paying us $500 a week on top of our pays. That was the agreement with everyone. They are still processing everyone else who they owe until now.

Mr BROWN: What happens if you leave the workplace during that time? Do you get the $500 that you are owed?

Ms Lemisagele: One of my friends got fired because something happened at work. She got a bulk pay. For the people who do not work there but who used to work there, I think they made an agreement with them as well that they would get paid $500 a week.

Mr BROWN: It is a lot of money on top, is it not?

Ms Lemisagele: Yes, it is lot. It is a lot from what I am making.

Mr BROWN: How long had they been in business?

Ms Lemisagele: I think five years. I have only been there for two years now.

Mr BROWN: Do you know if the back pay goes back for the whole five years? Have they been cheating from the start?

Ms Lemisagele: Yes and no. I would not really know, because I only know mine. It is from when I first started.

Mr BROWN: Thank you again for coming in.

Mr DAMETTO: Thank you very much for attending today's committee hearing. Firstly, to Martin and Imogen, congratulations for putting together this Young Workers Hub. I think it is a great idea. I agree with you. I have family who are in high school at the moment and the idea of them not knowing all their rights can be a bit of a challenging experience when they go into their first role, so the work you are doing is very good in my mind. You highlight the fact that at the moment while you are at

school you are not taught these sorts of things. I think other programs like this could also work off the back of the idea that we should be teaching kids in school about finances, how to open bank accounts and actually manage a life rather than just learn the academic side of things. I think what you are trying to achieve here is very important. Where are you getting your funding from at the moment? Is it a not-for-profit organisation? How does that work?

Mr de Rooy: We are run out of the QCU. At the moment we get our funding and support from the QCU.

Mr DAMETTO: Thank you very much. Katherine, they were not giving you pay slips. I have heard that this is quite a thing. What were the excuses that the employer was using? Do you think they were valid? Did you end up getting a resolution where you were actually getting pay slips at the end?

Ms Hamburg: This was my very first job ever. In the first week I naively thought they had forgotten to give me my pay slip so I went and asked. The response was less than welcoming. The second week, in the next pay cycle, when I did not receive a pay slip, it became very clear to me that that was not part of the culture and part of the practice of that business and that if I was to agitate for my right I would be a difficult worker and was not comfortable continuously having to challenge them every week for a pay slip for fear of losing my shift, losing my job, when I was not in a position to lose that income.

Mr DAMETTO: I have heard that is common at the moment, especially with people where that is their income—that is the only way they are getting funding to live or do whatever they need to do and live life, so I can understand that. Siva, you are employed as a part-time worker; is that correct?

Ms Lemisagele: I am a casual.

Mr DAMETTO: Do you believe a lot of the problems with the pay system and the leverage that employers do use sometimes, that you might not have your next shift or you might not be rostered on, are coming out of an increasing trend of part-time and casual workers as opposed to full-time employment?

Ms Lemisagele: I am still a casual.

Mr de Rooy: Speak about your own experience.

Ms Lemisagele: My own experience is—how do I say it?

Mr DAMETTO: If you do not feel comfortable with the question, Martin or Imogen could answer it for you.

Ms Barker: Siva has worked with her company for almost two years now and she continues to be a casual. They have a large casual workforce where she works. Siva has asked to be made permanent, and that is something that that worksite has been dealing with—trying to get more permanent employment there. The workers are asking for that and that is something that they are pursuing and it has been a struggle for the workers there, yes.

Mr DAMETTO: Thank you for that.

Mr HEALY: Thank you, Siva and Katherine, for coming in and telling us your unfortunate stories. I am very sorry to hear them. Hopefully your contribution here will contribute to something positive and we will be able to do something about that. Martin and Imogen, I am interested to get a feel for how much you think the wage theft is intentional and, recognising there are some good employers out there, how much is miscalculated or not intentional?

Mr de Rooy: In our experience and in preparing our submissions we would say that in Siva's case, where she was underpaid over a period of two years, it is intentional. A business that size justifies a really good HR department, an IR department, that can pay their workers correctly. We think a business size of 400 workers justifies that, and the fact that Siva was underpaid for so long in our view is a business model to undercut wages and to exploit young workers, who we know are disproportionately affected by wage theft because they do not know their rights and are less likely to speak up when they do.

In Kate's case, not receiving pay slips for a year and a half is a pretty deliberate act, so we believe that that is deliberate wage theft—not providing basic pay slips in a prescribed form. Absolutely there are good employers out there, and we believe that these cases are deliberate in terms of wage theft as a business model and wage theft in not providing young workers what they need to be paid correctly. That is what the Young Workers Hub has experienced.

Mrs WILSON: Thank you all for coming in today. I am a mum and four of my five sons work. Have you had conversations—particularly you, Katherine—with your parents about your wage? With my kids I know that, regardless of whether they were little kids or adults, which they are now, I have always discussed their rights and obligations and made sure they are up to date. Were you having those same conversations with your parents?

Ms Hamburg: Yes. As Martin and Imogen have said, for young people there is a lack of awareness and knowledge of where to go. Where do I even find out this information? A lot of the time young people are finding it out from their parents and their friends. If you do not have that environment to operate in it can be very hard to find out what your rights are. In my experience, the only way that I knew that I was entitled to my pay slips was through my parents. It is a tight job market. There are a million and one other people who are willing to take my position in worse conditions.

Mrs WILSON: I appreciate that. I do understand that.

Ms Hamburg: I was not in a position to let go of that job and I was not in a position to challenge my boss to demand my right, so it was a case of putting up with substandard behaviour.

Mrs WILSON: You were working for this employer for a few years. You would have been under the age of 18?

Ms Hamburg: Yes.

Mrs WILSON: In my experience with my children, I would have approached my children's employer because at the end of the day they are my children—and I know your parents would have done exactly the same thing. Did they go and see and discuss your situation with the employer on your behalf? They normally have to sign documentation—or I know in my case I have for my children.

Ms Hamburg: I started working there at 17. Because I investigated the award and I was being paid a couple of cents above the award, the issue was the lack of pay slips. I do not have that evidence to feel comfortable to even challenge or investigate because there is no hard proof of what my wage is or what hours I have worked that week. Not even having the pay slips makes it really challenging to even start that conversation with an employer, let alone someone's parents coming in and asking on behalf of their child.

Mrs WILSON: Thank you, and I do appreciate that. You have stated within your submission that the current industrial laws are insufficient to address wage theft. What changes would you propose be made in the Queensland Industrial Relations Act as updated by the Palaszczuk Labor government back in 2016?

Mr de Rooy: That would be obviously what the inquiry discusses through the course of its hearings, but we believe that a separate legislative instrument is necessary to address wage theft. You raised before whether Kate had spoken to her parents about it. The world of work is very different now to when our parents were our age—young workers having to get ABNs to have their work, young workers receiving texts from labour hire to have their work. It is very different now. Whether you are engaged directly, indirectly, labour hire or an online platform—however you are engaged in your work—we think a separate legislative instrument is needed to make sure that those engages are complying with Queensland's workplace laws.

Mrs WILSON: I am not that old and I do have older children. I am actually quite flabbergasted by that comment because I think parents today have worked in the past—I certainly know from my own personal experience and my friends' experiences—so I find that comment quite peculiar, to be quite honest.

Mr de Rooy: I think where the comment comes from is now in 2018 we have Foodora, Uber, Deliveroo, labour hire—

Mrs WILSON: Yes, life has changed.

Mrs STUCKEY: Some parents are Uber drivers.

Mr de Rooy: It is very different.

Mrs STUCKEY: We are not all dinosaurs, are we?

Mrs WILSON: That is exactly right.

CHAIR: We might move on if there are no further questions, just comments. We do have a few minutes remaining in this session. I have a supplementary question for you. I make the point, also being a mother with young children—they are too young to work, as they are four and seven; I have not sent them out yet—that there are many young people who do not have someone to advocate for them and they are very much on their own and also wish to be in control of their life and these

relationships are between that employee and the employer and not with a parent. I do want to make that point. I appreciate that. Kate, you mentioned that you were underpaid $100. Could you clarify? Do you remember making that comment?

Ms Hamburg: Yes, definitely. In terms of what I know 100 per cent I was underpaid, it was $100 and that was when a different member of staff did payroll that week and I believe did not intentionally underpay me that. My issue was that when I followed it up with the person who is normally in charge of payroll I had to chase and chase and did not get a response and did not get that issue resolved. To me, because the person who is responsible normally for pay did not make an active effort to investigate and to repay me my money, I believe that is when it became intentional.

CHAIR: I am interested to know—and I know it is all relative—what $100 meant to you.

Ms Hamburg: At the time I was under 18. I was making $14-something an hour. I was getting maybe a six-hour shift a week. $100 is a lot of money. I am a student. That is the difference in being able to afford to travel to uni on public transport—the basics and the necessities of life. It was a substantial amount of money to me at the time.

CHAIR: Thank you. The terms of reference are very clear in regard to looking at both the state and federal jurisdictions, but the committee has heard that those who have contacted the Fair Work Ombudsman have essentially been left on their own. They may have been given information, but they were told to pursue the matter themselves. The Queensland Law Society was in here earlier this morning and was talking about the cost of filing a matter in the Federal Circuit Court. Given that can range from $71 to hundreds and hundreds of dollars, can you tell me how likely you would view young people pursuing these sorts of matters on their own, independently?

Ms Hamburg: In terms of a financial perspective, $100 is a lot of money to me. I was not in a position to risk a $70 fee on an act that I did not know would be successful or would end up costing me my job. Without the support of, in some people's cases, family or unions, the onus is on the employee and that is a really heavy onus to bear. You have to be the one to take responsibility to investigate this at a cost, with no guaranteed outcome.

Mrs STUCKEY: Leading on from that—and I am not across this as are the lawyers and some other people—I thought QCAT was an avenue that people could go to as well. That would not be costing them. Didn't the gentleman from Melbourne say not for mediation but to actually have it heard? QCAT is not an avenue?

Mr de Rooy: In our submissions in Caspar's case the Fair Work Ombudsman did not advise him that that was an avenue. The ombudsman advised Federal Court or Federal Circuit Court and, as Kate has expressed, the fees for that are quite substantial for young workers and Caspar was not given any further support or explanation on what he could do if he were to run a matter in that jurisdiction.

CHAIR: Thank you. The time for this session has expired. The committee will now reconvene in a private session and we will return at 1.15 pm.

Evidence was then taken in camera but later resumed in public—

BASSINGTHWAIGHTE, Ms Ellie, Solicitor, Hall Payne Lawyers

PAYNE, Mr John, Principal Lawyer, Hall Payne Lawyers

CHAIR: I now declare the hearing reconvened. I am sorry we are running a little bit late. I would like to formally welcome our next witnesses and thank you on behalf of the committee for your submission to our inquiry. I invite you to make an opening statement of up to five minutes before we ask questions.

Mr Payne: Our submission is directed towards terms of reference (e) and (f). They are largely technical submissions that have been put before the committee in support of the QCU's submission. We have not canvassed the nature of wage theft in any great detail because that is more than adequately done in the QCU's submission. As the committee would be aware, the current regulatory and enforcement regime is comprised of civil penalties for noncompliance in relation to various instruments and, principally in the area that we are talking about, federal instruments because most of it will be national system employment and not state public sector employment.

The ability for affected workers and for the Fair Work Ombudsman to pursue contraventions through the federal courts or prescribed state courts is what presently underpins wage recovery. The rarity with which the FWO commences proceedings against individuals and businesses engaged in wage theft and the hurdles that the individual workers face in attempting to enforce their entitlements means, in our view, that there is a desperate need for an effective deterrence to be provided for businesses or individuals, those running enterprises, so that, when they make decisions about these things, they take pause. That is the purpose of deterrence. In circumstances where it is neither appropriate nor realistic for the burden of deterring wages theft to fall on the workers, then it is appropriate for it to occur through a mechanism such as the Criminal Code, which is where we eventually end up. It is a proposition that is being effected by the state, not the individual.

The crux of our submission is that the current regulatory and enforcement framework does not act as an effective deterrence to those individuals who make a considered decision to engage in practices that fall within the definition of wage theft. It is also ill equipped to distinguish between underpayments that occur as a result of genuine misunderstanding or ignorance of the relevant requirements and those instances of wage theft that are the result of deliberate and intentional practice. We are not talking about mistake, we are not talking about inadvertence; we are talking about deliberate conduct, whether it be deliberate in the sense of a decision made or whether it is deliberate in the sense of recklessness—that is, not paying proper heed or even considering the outcome of potential conduct.

It is important to look at the purposes of sentencing, and that is set out in section 9 of the Penalties and Sentences Act. Subsection (c) is what we are focusing on, which is 'to deter the offender or other persons from committing the same or a similar offence'. It is also dealt with in the QCU submission under the heading 'Enforcement'. In the second paragraph on page 12, it says—

A strategic approach is said to have four major aspects to it: prioritisation, deterrence, sustainability and systemic effect.

We are focused again on deterrence—the primary underpinnings, the purpose of sentencing, deterrence, the fact that this appears to be a business model in some enterprises. Again, we are not talking about inadvertence. We are not talking about mistake. In that regard, you will have seen the reference to section 24 of the Criminal Code which protects against penalty in circumstances of mistake.

The other issue—and a significant issue—is the inequity of the current regime where a servant is penalised, as a special circumstance, to potentially 10 years whereas the standard circumstance is five years. Public servants are similarly dealt with. It is hard to work out why there is a rationale for that inequity. An employer not paying wages in circumstances amounting to wage theft is arguably not liable to a penalty if they are penalised under the act, which we have some difficulties with at the moment, due to the definitions within the Criminal Code. They are going to be subject to a lesser penalty—and that is if they are prosecuted.

Again, to use the analogy of workplace health and safety, which we have referred to in our submission, those of you who are old enough may remember the Robens inquiry in England. It was the first major inquiry into workplace health and safety, conducted by Lord Robens. What came out of that inquiry is that you cannot fix the problem by inspection and you cannot deal with the problem by monitoring; workplace health and safety is far too big a regime covering too many workplaces to conduct an enhanced workplace health and safety system. It went more to a proposition of self-auditing. Underpinning that is deterrence. That was part of what Lord Robens came to. I have

not put that material in this paper. I am happy to do so. It is an analogous situation. There are issues that need to be redressed. They cannot be redressed by monitoring. Any form of monitoring, any form of complaint, should be underpinned by a proposition of deterrence.

CHAIR: Thank you very much. Could you take it on notice to provide that information? It would be of interest.

Mr Payne: Certainly.

CHAIR: I imagine that it may go to a paper that I found very interesting, by academics Tess Hardy and John Howe, who are going to appear before the committee, titled *Creating ripples, making Waves? Assessing the general deterrence effects of enforcement activities of the Fair Work Ombudsman.* I appreciate that you may not be aware of that paper, but the point they made there seems to be consistent with the point that you are making—that is, it is not acting as a deterrent but, interestingly, those organisations questioned that may have had no dealings with the Fair Work Ombudsman certainly felt that the penalties were high and that they were at great risk if they did something wrong. It also showed that the more the organisations knew of the Fair Work Ombudsman's activities the less concern they had about being caught. Whether that is a reflection of the fact that they are not doing many investigations or not seen as being very present, certainly the paper found that when there is a threat of individual penalties it has a more significant deterrent effect. Obviously that is the premise of your paper.

Mr Payne: That is the premise of our paper, yes.

CHAIR: Thank you. The other question that I have for you is in regard to the fines. Some have argued that fines have been increased and that that will be a better deterrent, so why the proposition in your paper to move to this regime?

Mr Payne: Because it can become a cost of business. The QCU deals with the concept of the business model in a couple of different places throughout that paper. Part of the business model can be that it is simply a cost. We have seen the conduct of various large institutions before the royal commission into financial services, to use the shortened name. It appears that it was a cost of business. There was not an expectation. You will recall earlier last week the royal commissioner put to the woman from the NAB superannuation offshoot that they had been charging fees without telling people. They had thought about whether they should tell people and they decided not to. Commissioner Hayne raised with the witness, 'Didn't you think about criminality?' Her answer was, 'No.' I can provide that transcript if it is some value. Again, it goes to the proposition that you have just raised, which is that, unless this is front and centre in people's minds—not as something that will affect them on a day-to-day basis but as a potential prospect if they engage in a course of conduct—I think the current penalty system, or civil system under the Fair Work Act, will not have sufficient teeth.

CHAIR: Is it your experience that organisations are aware generally—or at all—about the penalties that can be imposed? I also appreciate that you are making the very clear differentiation that needs to be made between those who are pursuing this as a business model and inadvertence. I think that is an important clarification.

Mr Payne: Yes.

CHAIR: Certainly when you look at the commentary around the proposed introduction in different jurisdictions of a criminal offence for wage theft, people say, 'People make mistakes.' I appreciate that you have clearly differentiated that we are talking about clear intent. Will they be aware of it? A lot of people are saying, 'People just don't know what the rules are.'

Mr Payne: Part of the compliance program overall is not just deterrence but communication as well. You only need a few of these offences to be prosecuted and it becomes a matter of public awareness. That has happened in workplace health and safety. Hopefully, now that new legislation is in place—you hope not, because someone has to be severely injured or in fact die for that to occur—it is not part of the public domain in that sense. Once the offences have occurred, once they are prosecuted, these things are picked up notoriously within newspapers in the public domain. They become part of the knowledge of the industries. I think it will happen in that way. For anyone who has advice—although you would have to think probably these people may not have advice—that becomes part of the adviser's regime as well.

Mrs STUCKEY: In looking at your submission in regard to some of these fault elements, particularly around definitions of mistaken conduct versus recklessness, I note that you say that recklessness is not defined in the Criminal Code.

Mr Payne: Yes.

Mrs STUCKEY: However, it can be identified as falling into the definition of 'wilfully'. Should those definitions be reclassified in relation to this? Should they be as they stand now from a legal perspective?

Mr Payne: It is always difficult. We have not come up with a proposed section. That is really the domain of the public sector through the parliamentary draftsman. They are much more experienced than I am in drafting legislation. I would hesitate to ever suggest something to them. Rather, they produce something and then we look to see whether that works. To me, that is the next phase. We are certainly not suggesting the form of words. We are raising issues. The primary issue that we raised was section 109 of the Commonwealth Constitution. We believe that that issue can be disposed of. We have put in some reasons that is so and that it is not covering the field.

I might take the opportunity to add a further argument—and, I think, a more sound argument—with respect to paragraph 26 of our submission, and that is that deterrence and criminal penalty is not about the enforcement of wages and conditions at all; it is about the maintenance of civil society. I think that segues nicely into the question that you have asked. How would I see the legislation? I am not going to say that it should only look like this or should only look like that. They are matters that need to be taken into consideration. They are proper to take into consideration, because this is not about sweeping up people in a net; it is about aiming to get those people who have set off on a course of conduct, or have been so reckless about the course of conduct that they adopt that they do not care about the outcome and they do not care the effect it might have on fellow citizens, in effect.

Mrs STUCKEY: Thank is the crux of what I have been asking, too. It is that area where you say further that that defence should not be excluded?

Mr Payne: That is right.

Mrs STUCKEY: However, I gather you are suggesting that, once this progresses, that is an issue for the legal counsel to draft.

Mr Payne: It is indeed. It is a matter to be taken fairly into consideration and appropriately taken into consideration.

Mr HEALY: Thanks, John. I love your passion. I love your submission. Is this employed anywhere in the world at the moment?

Mr Payne: At the beginning—

Mr HEALY: I always believe that, whatever problems we are facing, somebody somewhere else is facing them. We have been around for a while. Is there a case that we can have a look at?

Mr Payne: No. Victoria is looking at it. I think we identified wrongly the government in New South Wales as a Labor government and not a Liberal government. I believe they are looking at it.

Mr HEALY: I try to stay away from the politics, to be honest.

Mr Payne: It was a footnote and I think the footnote is incorrect. I apologise to the committee for that.

Mr HEALY: That is all good.

Mr Payne: We also located Seattle and Boulder in Colorado as two places, but it is not done in this way. It appears to be more of a code for the police to prosecute on and, given the mix of laws between cities, state and federal in the United States, I do not think that we can draw too much. Canada did have it but it no longer has it. It had it way back in the 1930s.

Mr HEALY: We are talking about a statutory body that was empowered to back up that legislation?

Mr Payne: It had a statute. Whether it was the police or another body that was enforcing it I could not say. It has been gone for a long time. We located the history of it, so I can also provide that to the committee if that is of any value.

Mr HEALY: I would be keen to have a look at that, if it is not too much trouble.

Mr Payne: No, it is not too much trouble.

Mr HEALY: I agree with your submission. I think there could be a range of challenges for the government—from the costs of setting it up and trying to dovetail into existing legal infrastructure, or how we look at implementing it. Just from the hearings, from my perspective, anyway—

Mr Payne: I would not see that it needed a new resource. To my mind, it is a matter that would require investigation. We have a police service that already has that function. We have a prosecution corps of the Police Service at the first level. We have prosecutors within the state. I think you could

use the current structures. I do not imagine that this is going to be a frequent prosecution. I would like to think that it was not, because we are arguing for deterrence. We would hope that this was used sparingly in the circumstances that are egregious and deserve this response.

It does not rule out civil recovery, but it is not part of the civil recovery regime. Yes, people can pay compensation or restitution into court and that might have an effect—it certainly has an effect on the judges when it happens. I do not see that it will require a new structure. I know that there are other submissions that focus more on the wage aspects of it. Yes, there may be some new structures that are required there but, in terms of what we submit, this can all be pretty much done within the current framework.

Mrs WILSON: The reason I am asking you this question is that I have heard this term used several times today. The term is 'business model'. Are you able to give me some further information? Is there a general size of business that you see coming under that business model?

Mr Payne: No. Again, the QCU paper deals with that pretty adequately, as do, I believe, other papers. We are seeing it across industries. There are certain industries such as hospitality where it might be more prevalent. You could have knocked me over with a feather when I saw that journalists were being caught out in that particular instance that was given. I think it is across industries.

Is it of a size? Despite what I might have said about the royal commission and banks and super funds, I do not expect that this proposition would be given life in large corporations, putting aside the franchise issue which, again, is adequately dealt with in the QCU paper where the head franchise is removed from the employment. Whether it is small or whether it is large, what I see it as is persons, as I said, who do not want to support civil society. They are criminals. It is the beauty of being a human. We have the old bell curve, and there are good guys at one end and bad guys at the other and that is the way it is always going to be. What we try to do in civil society is adjust for that by making necessary compromises between conduct of business and those things that, as has been said previously, are egregious and should not be part of the conduct of business.

The business model concept is where people, knowing that the FWROA—sorry, the FWO. I work in governance and I forever use the FWROA. Its basic proposition is that it will try to negotiate resolution. That may well be sensible because its focus is on recoupment in the first instance. It may have other obligations, but that is a significant part of its obligation. It is seen that, 'If we are caught out we have to pay, but we have to pay anyway so there is no loss of cost to us. Yes, if we are too egregious in our behaviour we might get hit with a penalty but the risks are slim.'

Mr BROWN: I want to follow on from the point of the member for Cairns when he talked about the existing structures. I have represented hospitality members at the police station where employers have given the tape over to the police who have gone after them for stealing by a servant or a clerk. I appreciate that you have framed that in the same way that you can see the same model happening in that respect. You say in your submission that the constitutional aspects are very limited and that it would be knocked off by the High Court if we implemented legislation in that regard.

Mr Payne: No, what we are saying is that we think section 109 will not operate. We do not think the Commonwealth is purporting or attempting to cover the field in respect of this aspect. Certainly the Criminal Code of the Commonwealth is not. The only offences relevant are where you steal Commonwealth property. The Fair Work Act is also focusing on the recoupment of conditions—protecting wages and conditions and putting in a system in relation to that—but it is not dealing with criminality. They are not criminal offences. I do not see that the placement of a penalty as a deterrent is going to be inconsistent with what the Commonwealth has legislated for. I do not see that there is a High Court point in this for a constitutional point.

Mr BROWN: I think the exact words were 'very limited prospect of success'.

Mr Payne: In terms of someone using the Commonwealth legislation to defeat—

Mr BROWN: If that limited success were successful, that would also knock off the offence of stealing by clerks and—

Mr Payne: Arguably.

Mr BROWN: I wanted to try to demonstrate evening up the playing field for employers and employees in that regard.

Mr Payne: It was that provision and that comment that led me to rethink why this is not within what the Commonwealth has already legislated. As I said—and I will restate it—it is not about enforcement of wages and conditions. It is about the maintenance of civil society. It is so that we can all live together. It is that adjustment.

Mr DAMETTO: Thank you for coming today. Your submission has been brilliant to go through in terms of thinking about how wage theft could be brought into the Criminal Code. There is one thing that worries me about wage theft being brought into the Criminal Code. The outcome I would like to see is the money being returned to the workers and the workers being compensated. I understand that the idea of bringing this into the Criminal Code works as a big deterrent stick to employers who could potentially be engaging in this kind of conduct. What worries me, though, is if it is not taken on board that way and it starts clogging up the police system or the already congested criminal system. Once they have gone through that process, will they still have to go through a civil case to recoup that cash?

Mr Payne: To start with the end point first, restitution is very much something that the courts look favourably upon if you are before the courts. I will use pretty plain language: if you are ripe for it and you have not paid, you had better pay at that point in time because the judge will take note and that will in turn inform the penalty. That is really the first part of that answer. Can you repeat the first part of the question?

Mr DAMETTO: The first part of the question was whether you think this will—

Mr Payne: The clogging of the system?

Mr DAMETTO: Yes, clogging of the system that is already clogged at the moment.

Mr Payne: Yes, I apologise. The answer to that I think is a practical answer. Somewhere in our submission there is a paragraph along the lines that a person can be prosecuted presently under the Criminal Code and it is taken as moveable property—that was the issue we were looking at. It is an awkward definition to fit it into because when does a payment crystallise? Is it when the work is done? Is it the end of the pay cycle? There are those sorts of issues.

When you are going to the police it is good to have an offence that is clear cut. It makes their job that much easier. You might be a bit surprised. Let us say that you had a company which was defrauded by $100,000 not by a servant but by an agent. You have pretty much all the evidence. You go and talk to the police about it and you expect them to pursue the $100,000 because that is an awful lot of money to a business.

Mr DAMETTO: That is right.

Mr Payne: No. If it is a fraud it is very unlikely under the current system that that would be able to be pursued. What we do when we have that level of fraud is make sure we have a full brief for the police. We take it to the police. They have internal committees that look at this and decide what resources they can put into prosecuting.

The Police Service already has a system that deals with those sorts of issues. Yes, there are minor offences that will regularly be dealt with at station level. There are no issues about that, but when you are starting to talk about not usual offences—as I said, this is for egregious behaviour; this is not mistake or just an underpayment of wages. This is something really serious. This is the same level as the death of a worker. This is the sort of legislation we are talking about. We hope they do not come up very often, but when they do come up then the system will find a way of dealing with them. It is not about a wage claim for $1,000 where there was a difference of opinion about whether the penalty applied or there was a difference of opinion about whether the hours had been worked. It is about the cases that have been illustrated in the QCU submission where someone has gone off in a decided way or a significantly reckless way to achieve a purpose that is to put money in their back pocket. Does that assist?

Mr DAMETTO: It does. What dollar figure would you put on that?

Mr Payne: I wouldn't because it is egregious. For example, I have a daughter, as probably many of us in the room do. She works for the public sector. There has been no real issue in relation to her payment, but if there were I as a parent would want to investigate that. It may well be that the circumstances that I uncover for a small payment might be egregious. It is not about quantum; it is about the behaviour that led to the underpayment. If it is a one-off circumstance, that might be taken into account in any prosecutorial policy. Do not forget that the prosecutors have prosecutorial policy. Regulators—whoever they are—will pursue certain types of claims but they have their own system.

Mr DAMETTO: Of course. I want to go back to the clogging of the system and the number of submissions we have received so far in this inquiry. In talking to young workers especially it seems to be rife, from all their accounts. I am starting to think to myself, 'Are we going to have nearly every person under 18 or under 25 turning up to a police station every afternoon when they have a problem with their pay?'

Mr Payne: I would hope not.

Mr DAMETTO: Likewise.

Mr Payne: The world is not a perfect place and there may well be some teething issues in the introduction of any new proposition of law. I think it is unlikely, because the police already deal with a massive number of inquiries. They deal with them very adequately and dispose of them very adequately by sensible communication between the parties. They play a significant role that we do not get to see every day. I have faith in their ability to do so in relation to what we are talking about.

Again, my focus is on egregious behaviour, not minor behaviour. That will no doubt also be the focus of the police because it will be, 'Where is the evidence of it being conduct of the nature that is egregious? Is it just an underpayment?' They will deal with this in their community servicing role that they do so well.

There will be a need for education. When I was speaking to the member for Cairns I was talking particularly about the current systems and fairly major prosecutions—not the concern that you presently have. The member for Cairns raised the issue as to whether there would need to be resourcing, and in that sense there may well be, but it might well be that it is a centralised resourcing to support the various clusters of police stations around the state so that they have access to someone who can understand the matrix of laws that apply to the recovery of wages.

CHAIR: We have run out of time for this session. I thank you sincerely for the submission you have made to the inquiry and also for appearing today. I think you took two matters on notice. The secretariat will make contact with you to discuss and clarify those matters and also the date by which we would appreciate you replying to the committee.

BIAGINI, Mr Peter, Secretary, Transport Workers Union

FIEDLER, Ms Kelly, Industrial Officer, Australian Manufacturing Workers' Union

FOGARTY, Ms Shannon, Industrial Officer, Communications, Electrical, Plumbing Union

McKAY, Mr Ken, Advocate, Together Union

PEVERILL, Mr Dermot, Industrial Officer, United Voice

RICKARDS, Mr Michael, Member, Transport Workers Union

SIVARAMAN, Mr Giri, Principal Lawyer, Maurice Blackburn Lawyers

CHAIR: I now welcome Giri from Maurice Blackburn Lawyers. You have a number of individuals with you today. Could you introduce the submitters and then you are invited to make a five-minute opening statement. Then we will open for questions. Thank you for your submission and for coming today.

Mr Sivaraman: Thank you, Madam Chair. Thank you for the opportunity to be here. My name is Giri Sivaraman. I am an employment law principal at Maurice Blackburn Lawyers. Here with me today is Michael Rickards, who is a member of the Transport Workers Union. After I speak, he is going to tell his personal story of what he has gone through as a contractor. It is a harrowing story. He will do his best. This is a very unfamiliar situation for him. I want to commend him for being very brave in coming here to speak up. He is a boy from Western Australia who has come a long way from home and he is here to tell his story in Queensland.

CHAIR: Welcome.

Mr Sivaraman: Mr Peter Biagini is, of course, the secretary of the Transport Workers Union, Queensland. Mr Dermot Peverill is an industrial officer for United Voice. Ms Shannon Fogarty is an industrial officer for the CEPU plumbing division in Queensland. Ms Kelly Fieldler is an industrial officer with the AMWU. Mr Ken McKay is an advocate at Together union. Also involved in our submission, although not here today, is the Australian Meat Industry Employees' Union of Queensland.

You would have seen from our submission that we have sought for wage theft to be criminalised. I was listening to the debate and to discussions that just took place with Mr John Payne. I think the key aspect of our submission which differentiates from others, certainly from what I have heard—it may be a matter for contention and it may not—is that we have said that unions—and I am here with five unions and I acted for six in the submission—have to have a central role in prosecutions. Unions have to have a central role in ensuring industrial fairness. Unions have done that for a very long time in this state and in this country.

If you are committed to a system that ensures fairness, justice and accountability, unions have to play a central role in that system. They have done it in the past. There are examples in other jurisdictions where unions have had the capacity to bring prosecutions that resulted in criminal sentences. Probably most notably that was in New South Wales until harmonisation with work health and safety legislation, where unions had the capacity to bring prosecutions. My industrial knowledge and history is surpassed by some of those sitting at the table with me. Peter Biagini will probably speak to this. Peter and some of the people in his union have told me about the role that unions have played in prosecutions going back to the 1980s and the 1990s and earlier than that in Queensland.

In terms of why it has to be treated as theft and criminality, I appreciate that that is something that has been agitated with you previously. I will use an example that I used recently. One of the big matters I was involved with was 7-Eleven. I coordinated a pro bono legal team that represented over 100 7-Eleven workers and recovered $6 million, which is just the tip of the iceberg. If I walked into a 7-Eleven store and I stole a Snickers, I could be jailed for five years. If I was behind the till and I put my hand in the till and stole $5, I could be jailed for 10 years. If my boss decided to just not pay me or force me to pay back half my wages, which is what happened, I would have to chase him for a year and a half in a slow and burdensome court system and hope to get that $5 back. That is the difference between my position as the employee and my position as someone who actually stole, say, walking into the store. It is a massive difference. In reality, why should it be so different when the same thing is happening?

We advocated in our submission for a separate act. The member for Hinchinbrook was discussing this in terms of some of the questions with Mr Payne, I noticed. One of the reasons for that is that theft has always been envisaged as someone coming in and taking something away. There is a conceptual difference with wage theft and that is that you withhold it. You have the power, as the boss. You are the one who has the money and you are giving it out. You are choosing to withhold it. You are choosing to keep it. You are choosing to deliberately, in some instances—and that is what we are focusing on—withhold it. That is why it needs conceptually a different act, and it needs a different act if you are going to build in the powers for unions to be able to conduct those prosecutions. A different act would allow for a tiered system, as we have identified in our submission.

Madam Chair, I am not wanting to pre-empt all of your questions, but one of the issues that you talked about was the difference between intent and non-intent. We have made that clear in our submission. A tiered system allows the intentional or reckless conduct, where you completely do not care about what your obligations are, to be severely penalised.

The broader aspect in our submission deals with the gig economy, ridesharing and independent contractor arrangements, which is something that Michael will talk about because he was an independent contractor. We have dealt with that because, in part, I guess, we are emboldened by or it is really pleasing to see the Queensland government is actually leading the way in some of these areas, providing policy leadership in terms of labour hire, legislation of industrial manslaughter, a discussion on the future of work, a wholesale state based review of the Work Health and Safety Act. It is that sort of innovation that is now required to deal with the prevalence of precarious work.

The reality is that if I wanted to avoid an industrial instrument I could just withhold the money. I could simply not pay what I know I need to pay or I could set up a sham arrangement, which is what happened to Michael—I do not want to tell his story before he tells it—where I have an independent contractor arrangement with someone who has no power or capacity to bargain and who then does not get what they would get under an industrial instrument. It is lawful wage theft. I am creating a structure, that is allowed by the law, that allows me to avoid the reach of hard-fought, hard-gotten industrial instruments. It is becoming more and more prevalent. That was one of the reasons, of course, for the Queensland labour hire inquiry. That is something that we are trying to address.

This is something that affects many industries, but it affects transport significantly. Peter will deal with that. There are ways to deal with it. New South Wales has a contract-for-carriage power that allows some minimums in terms of those types of work. The passenger vehicle transport legislation could be amended so that it actually mandates looking at the way in which, for example, Uber drivers are treated and what they earn. At the moment there is a great deal placed on how you treat your passengers and whether you are fit and proper in that sense, which flows on in terms of having a passenger vehicle licence as an operator. However, what about the treatment of the drivers? What about the fact that that system allows them to fall out of the reach of industrial instruments? Conceptually, why can we not think about that in terms of the implications of wage theft?

CHAIR: Giri, I apologise, but I am mindful of the time and I know that you want Michael to tell his story. I did not want him to miss that opportunity.

Mr Sivaraman: I will hand over.

CHAIR: I apologise. I know you have a lot of important things to say that we want to hear.

Mr Sivaraman: This is the last point that I want to make and it does lead on to Michael. You cannot underestimate the impact on a person's worth as a result of wage theft—the way in which it attacks their identity and their sense of value. Often people who are marginalised already are preyed upon and their sense of self-worth is eradicated even more. That is probably a good time to hand over to Michael, so he can talk a bit about what happened to him. Thank you for that opportunity.

Mr Rickards: I work for a company, Boske Road Transport. They have me working under a contract. I started there two years ago at $23 an hour, working 11 or 12 hours a day driving StarTrack, Toll—whatever the big company needed. At the time I started I was not paying for fuel, tolls, registration or insurances. I was driving a two-tonne van and they were covering everything. I have gone into a one-tonne van, as of March last year, and they raised my pay to $24.50 an hour, flat rate. I am still doing 12 hours a day—sometimes more, sometimes less; it depends. I am driving long distances, paying for my own fuel, paying for my own tolls, insurances, WorkCover—everything—at $24.50 an hour. I worked it all out and I am getting paid $10.30 an hour.

I approached the company about it and they just said that I am getting paid better than the award rate. It is not true. I am going home depressed. I am in contact with Fair Work at the moment. I had ambulances, police and everybody come to me at one of my locations as I felt suicidal, because

they just do not care. They know they have a hold on me, because I was young and stupid in Western Australia and I have a criminal record. They know they can have a hold on me and push me because of that. They expect me to work as an employee. They dictate to me what I can and cannot do.

For example, my daughter got sick a few weeks ago with an ear infection. We are from Western Australia. We do not have any family in Queensland to help us. I had to take time off work to take my daughter to the doctor, because my wife suffers mental health. She was in mental health at the time. I contacted the people I was contracting to and they said, 'Fine, take your daughter to the doctor.' I took my daughter to the doctor. I got abused over Facebook by the employer. I got told I was a piece of shit, that I do not have the right to take time off, that if I am going to take time off I'm going to lose my job. I got sick from stress. I am not covered by it. They text me every day saying, 'You have work here. You have work there. Confirm it,' so I confirm it. If I do not confirm it I am pretty much told, 'Get the eff out of our business.' I get abused by them verbally and mentally in their office. I have to stay there because nobody else will employ me. It is just not fair. They know they can get away with it. I drive their vans.

There is a lot of shit that is going on that needs to stop. It is not just me; there are 80 people like me out there in this business who are being treated the same. My wife suffers mental health. I cannot even take time off to go to mental health tribunals. It is really hard. There are a lot of things that I can say, but I do not have time to tell you it all. Working with somebody like Toll, if you have an accident they support you. Working for little companies like Boske, if you have an accident they withhold money from your pay. They do not even tell you what it is for. With insurances, you have to pay $5,000 excess for this when the damage was only $300. They are trying to do all sorts of little things that they are getting away with. It is taking a toll on all of us.

CHAIR: Thank you. Peter, were you going to say something?

Mr Biagini: Can I supplement a bit on that? Boske Road Transport is a business model. I know they know better, because I know one of the owners of that business who used to work as a manager at AAE, Australian airExpress. He went in and bought this business as a 50 per cent owner and has all his contacts with all the major transport companies. With this business, he uses those contacts to put them into those business and use them like labour hire.

Just today alone, two people up at Yandina were made redundant at StarTrack—that is Australia Post; that is an Australian government business—to make way for Boske Road Transport. The employees of StarTrack, Australia Post, under the EA get 12 per cent superannuation. They are on about $26 an hour plus all their penalty rates. They cannot compete with companies like this. They do not pay any super or WorkCover. They pay $24.50 flat and provide a vehicle. This is rampant. I could go on for hours about all of these types of things that are going on in our industry, such as at the distribution centres for Coles and Woolworths. They are running around carting groceries to the stores and they are paid by the pallet. They are subcontracting to the majors, because they are squeezed so hard in their contracts that they have to find a cheaper alternative to be able to do it without using their own employees and their own equipment.

CHAIR: Thank you, Peter. I might stop you there so that the committee does not run out of time to ask questions. Michael, thank you very much for telling your story. I am sorry to hear your story and the hardship that the situation is placing on you and your family. We also appreciate that it can be an intimidating environment to come here and we are very grateful that you did. Thank you very much.

I want to open with a few questions, but I want to make sure that everyone gets an opportunity. What came through strongly in your submission, Giri, and it has come through in the verbal testimony this morning, is just how much the employment relationship has changed, particularly in the sorts of sectors and the work that you are talking about. The distance that has been created between what an employee is termed and the employer certainly, it appears through some of the high-profile cases that you have prosecuted in this regard, means that the sense of responsibility that previously would have been taken is not. I know coming through university—I studied business and started in the private sector—with some of those employers of choice and big names, the reputational damage was sufficient to ensure they would never have allowed this to happen. Is it fair to say from your submission that with that distance and this arrangement where they say, 'Well, it is not actually my employee,' they are almost saying, 'No, if they are doing something wrong, go and talk to that company,' but they may be wearing their uniforms I understand as well. It is almost hard to understand. That is not the intent of the federal legislation. How is that legal?

Mr Sivaraman: The nature of the work is changing quite dramatically in terms of labour hire, in terms of the gig economy, rideshare and so on. I think every time you have a layer between the principal and the person doing the work you find there is more and more scope for exploitation. Dermot might want to talk to this, because I think United Voice did some research where they showed in cleaning that once you have the subcontractors come in you find a greater degree of exploitation.

Mr Peverill: I represent United Voice. United Voice is the union for contract cleaning. As part of this submission we identified that in 2013-14 the Fair Work Ombudsman conducted a survey and 33 per cent of our members, or certainly employees who were within our coverage, were underpaid. That is because of this distortion between the principal and the layers that we find our members in. As part of the submission we have provided some case examples. There is one primarily which deals with that distortion between the principal contractor and a subcontractor, who pays flat rates. It really distorts that ability for anyone to ascertain clearly and prosecute that subcontractor because the employment relationship simply is ill defined. That is across predominantly our cleaning industries.

We also represent members in other contract industries. It is not as broadly recognised in the security industry but certainly in hospitality and cleaning that distortion makes it very difficult for us to prosecute an employer. I could spend all day prosecuting employers for that distortion, but we go to great lengths to try to ascertain where the direction is coming from and who actually has that legal responsibility to ensure employees are paid correctly, either under an industrial instrument or a contract of employment.

CHAIR: The comment has been levelled that, while it may not be unlawful, you could argue it is unethical but under the current legislation, where I do not believe the intent was for that to occur, it is occurring. Is that fair and reflective of your position?

Mr Biagini: Just to answer, how they get around it is like they have done with Michael: sign a contract with an ABN saying he is not an employee. You take them to Fair Work and argue, 'But, hang on. He is not an employee; he is an independent contractor. We cannot deal with it.' That is how they are getting around it. Years ago there was no such thing. You had to be a reasonable business to have an ABN, not a one-off person maybe making $30,000 a year. That is how they get around it in our industry—put them on ABNs.

CHAIR: To Peter and to all of the unions here who represent employees, when you seek to test that, though—and I know cases in my own electorate: 'I wear the uniform. You tell me when I do and I do not work. I am not contracting to many different employers. This is my employment and clearly they are my boss'—what is happening, given there is a clear employment relationship?

Mr Biagini: We ran a big case years ago with DX Express. By the time we went through all the hoops they closed down and were bought out by Toll Transport, which then did the right thing so there was no final decision. They usually get out of it by closing down, and they will start up down the road again as something else. It is quite common. The resources to do that—off to federal courts, the whole lot, because it is so rampant out there, which ones do you pick? You might win one here and there is that ripple effect, but it is not making enough difference. The Transport Workers Union had the remuneration tribunal set up through the federal government. That was going to do that job because we were able to take the client. Like StarTrack, we could have taken StarTrack there and said, 'Look what they are doing with these contractors. That is unsafe under the guidelines of the Road Safety Remuneration Tribunal.' We need something like that put in place that is cheap to access to be able to go with these cases and get them heard by professional industrial people sitting on a bench. That would be much quicker and easier and less expensive.

Mrs STUCKEY: Welcome everybody, especially to you, Michael. A big sigh of relief that you have done that now. Giri, I know that we have just heard a little bit from United Voice about some data, but I am interested to learn what national datasets you can rely on in terms of quantifying the prevalence of wage noncompliance, including the industries where it is most common and in which states and regions.

Mr Sivaraman: I do not think there is one centralised point. There are a couple of different ways you can do it. Firstly, the Fair Work Ombudsman does keep some degree of statistics in terms of where they have conducted prosecutions—the industries where that has taken place and the states in which that has taken place—and I am happy to take this question on notice. I do not know if the Fair Work Ombudsman is appearing.

Mrs STUCKEY: We have been given some information but I would be very grateful for whatever you could supply.

Mr Sivaraman: I would be happy to take that on notice in the sense of compiling it from the various sources. Part of the problem is that it is not centralised. One, the FWO does it; two, there have been some academic studies that have researched into it—the most recent was at UNSW, which looked into the incidence of exploitation of migrant workers in particular; and, three, I think there was a South Australian academic study that looked into the exploitation of international students. If it would be of assistance to the committee, I am happy to try to compile that all into one document as best I can—a ready reckoner for you. I would need a bit of time to do it, but I am happy to do it.

Mrs STUCKEY: I would be happy with that. Are you happy with that, Chair and committee?

CHAIR: Yes.

Mrs STUCKEY: Thank you. There is not a degree of urgency as we do have a couple more months. Peter, do the employed staff of TWU's Queensland branch have a publicly registered EBA?

Mr Biagini: No, we do not.

Mrs STUCKEY: Does that mean you have a private agreement with staff?

Mr Biagini: All our people are on salary, very flexible arrangements, and there is no need for an enterprise agreement.

Mrs STUCKEY: I find that difficult to fathom given that unions are virtually saying you need EBAs in a sense to stop some of this wage theft but you do not have one.

Mr Biagini: We do not say that at all. We do not say that you necessarily need an enterprise agreement. If a company wants to pay good wages, they do not need an enterprise agreement. We normally need an enterprise agreement to get them on good wages, but if they already have good wages then good. If they have a living wage, that is fine. Enterprise bargaining does not seem to deliver that for many operators because they are competing. A union does not have to compete in the sense that there is only one Transport Workers Union. If we were competing with another one, maybe we would need an enterprise agreement because you are competing against each other on who is paying the lowest wages to be able to do your job. It is a very different organisation.

Mrs STUCKEY: That explains why you in your branch have the private agreements and not something that is set?

Mr Biagini: We have wages policies and procedures, which is a live document on our website for all our members to have a look at and on our national website. We do not have time and wages where they get paid overtime. They are all on a salary—very good salaries.

Mr HEALY: Good afternoon, everybody. Welcome. Michael: disturbing story, mate. As I said before, hopefully we can get something today that will eradicate those issues raising their ugly heads again. My question is to the unions here today. Peter, we can start with you. You guys are a national union. How does Queensland compare to other states?

Mr Biagini: Very similar. New South Wales is a little bit better because they have chapter 6, contract termination, where they have minimum rates for independent contractors and you are able to go to the courts. That was first of all only in the Sydney metropolitan area, then recently got expanded 50 kilometres outside that to Wollongong and Newcastle. They do not have that problem as much as we do in our state. Victoria is just tightening up its independent contractors and forestry acts, which have minimum rates mandated, the same as Western Australia. Queensland used to have the transport, disposition and courier industry award schedule 2, which meant that if you were an employee providing your own vehicle you got paid the conditions as an employee, and schedule 2 had a fixed cost and a variable cost that you had to pay somebody for providing a vehicle—absolutely. We lost that state award through Work Choices. It is gone. The federal award has never had that. Queensland is probably more disadvantaged than other states.

Mr Peverill: United Voice is a national union. We have a number of state branches. I think United Voice comes at it from a very different approach. Whilst we adopt a very standard approach, we look at it—I think Mr Payne spoke to it to some degree, and I am sure you will hear it from others generally—certainly from a Queensland point of view, in terms of deterrence and in terms of the business model of the alleged perpetrators. Quite often the Queensland branch, along with our other national branches, will look at the business model of particular employers and usually will adopt a very similar prosecution strategy. The business model dictates it for a number of reasons. The business model is generally the small to medium enterprises who are quite unsophisticated. They generally see it as an opportunity to withhold salary and wages. I know that United Voice takes a particularly aggressive approach to that.

I am currently in a number of Federal Circuit Court prosecutions. Some of those prosecutions look particularly around time and wages records and how those time and wages records are manipulated. In fact, you are often in a situation where you have two sets of books. In answering your question, I think my union, certainly at the national level, looks at the Federal Circuit Court as a forum to prosecute what we would say are egregious types of matters. In Queensland we also have a tiered system, where we also have the small claims forum under the Fair Work Act. That is where we can assist members to a certain degree where there are wage underpayments or theft under $20,000.

I can say from experience that there is a real gap between the Federal Circuit Court and the local Magistrates Court. We really need a jurisdiction where people can go, either with the assistance of their union—and I would say, certainly at this table, unions generally believe that we should have an ability to prosecute employers in whatever jurisdiction. It should not necessarily be restricted to, for instance, a public prosecutor. Whilst we say there is a place for a public prosecutor where that has been referred, we think unions play a key role in that.

To answer your question, there is a very uniform approach across United Voice nationally. State based, there is a clear—our submission and other submissions I have read look at that—gap between the Magistrates Court, which is a fairly limited jurisdiction—it is capped at $50,000—and a Federal Circuit Court application. I have read in a number of submissions that the cost is prohibitive. Michael's story is reminiscent of a number of stories in my union. We represent low-paid contract cleaners, hospitality and security. Giving those people the ability to prosecute their own application I think is a genuine opportunity we have before us. It is finding the way to translate that into a jurisdiction which delivers positive outcomes not just for unions but also for their members and for Queensland.

Ms Fiedler: I would echo everything just said, particularly about the jurisdiction. I think that goes to your question earlier about clogging up the criminal system as well. That is why the unions play an important role in this space. It is where we have worked well in the past. We are still working in that space, but it is difficult under the Fair Work Act in terms of getting right of entry to get the records that we need to prosecute.

Something we also need to look at is having a jurisdiction to easily go to to prosecute these claims. At the moment, the employers know that we have to jump through a lot of hoops to be able to get them. Again, it is their service model because they know it is difficult. We have people coming to us—and it is happening all the time—but where do you go with those? It is then clogging up what we do too. We need a streamlined approach so that we can help these people and then they can see that there are actually consequences to this behaviour and they may stop, hopefully, engaging in it.

At the moment it is very, very difficult. You have those low-end ones that you can deal with. You can send off letters of demand, and if good employers have done the wrong thing they will act on that letter of demand or they will have that conversation and say, 'We didn't realise,' and they will fix it. It is really about those ones who are deliberately doing it and you have to chase them. By the time you go through the hoops, they could have closed down. You have the phoenix thing happening all over the shop.

It really is a game for people at that level. They know they can just put people off. People do not raise concerns usually until after they are out of that employment because they do not want to lose their employment. As soon as you put a wage claim on the table, generally the next thing is they find a way to get them out of the door and then you are looking at an unfair dismissal as well. We definitely need that jurisdiction to be able to prosecute them.

Ms Fogarty: I think one of the important things to note is that we have two issues here. First of all, there is the issue of wages recovery, which is something that we already have a system in place for. Obviously, many of us at the table would have particular positions on whether the current systems we have in place for wages recovery are efficient; whether they are the best systems we could possibly have; whether they are simple and easy enough for union industrial officers, who often are not lawyers but are specialists in this area; and whether they are the most resource-friendly way to get that done.

What we are talking about here is a separate issue. We are saying that in particular circumstances it should be criminalised. In terms of how our union deals with it across Australia in terms of the recovery of wages—because obviously we do not have wage theft anywhere else in Queensland jurisdiction—it is very similar. I understand that South Australia has a bit more of an advantageous system because their tribunal, which is the equivalent of our QIRC, is named in the Fair Work Act as a tribunal very similar to our Magistrates Court in the sense that they can deal with those sorts of things really easily.

I think that is a different question of wages recovery. We need to have a look at how we can make that easier, more efficient and more conducive to positive outcomes. Even if we make that system as great and as efficient as it can be—even if we outdid the South Australian system—that still does not deal with the issue of why we need to criminalise wage theft, why it is a theft issue. Yes, we deal with it very similar to other states, but we are looking at doing something new here. We are looking at dealing with the theft of wages better and in a way that is resource friendly and does not clog up the system. We want a way to do this that helps workers, helps unions and gets positive outcomes without causing more problems, as you said. The submission drafted is our way of seeing that happen. It is not very different, but there are two stages here. There is the recovery of wages and then there is criminalising wage theft.

Mrs WILSON: Thank you all, and thanks, Michael. Giri, your submission states—

Over the past two decades, many business operators have found legal ways to avoid their responsibilities under Fair Work legislation and other legal and regulatory structures.

Do you believe that this is based on legislation changes or modern corporate structures that have come across throughout the world?

Mr Sivaraman: It is not legislative changes. The law has not caught up. I think that is the problem. The nature of work and corporate structures has changed dramatically but the law has not caught up. As an example, how are you supposed to negotiate terms and conditions with an app? That is what some people are expected to do. That is the short answer. I appreciate that I took up too much time earlier so I do not want to speak too much now.

Mrs WILSON: I appreciate that. That does make a lot of sense. Your submission also refers to the use of labour hire. Given that labour hire is now licensed in Queensland, do you believe that these issues should now be regulated and addressed as part of the state's regulatory oversight role and any issues of wage noncompliance?

Mr Sivaraman: The labour hire licensing scheme is definitely a good thing and a positive move, but I do not think it solves all of the issues. It does not deal directly with the notion of what happened with Michael—that is, where it is a sham contract or a sham arrangement—and it does not deal with the issue, for example, where I am a labour hire employee and I am working side by side with someone doing exactly the same work but she might be getting double the pay as me because she is directly employed and I am not. It will at least help in terms of stamping out the really dodgy labour hire operators, the fly-by-night operations and so on, but it is not going to be a complete solution, no.

Mr BROWN: I should disclose for the benefit of the committee that I am a former employee of United Voice and worked with Dermot. Giri, you made a point about the tip of the iceberg for 7-Eleven. My understanding is that they were caught out and prosecuted and funds are in, but the migrant workers are not even coming forward, even though they have a claim, because they are too scared. Is that correct?

Mr Sivaraman: Yes. That is absolutely correct. There are a few reasons, and one is that the migrant workforce is transient. I had many people call me and say, 'Can this be resolved within a short period of time?' I have said no. There was never a prosecution. That is important in the sense that they set up a scheme and then they made the scheme more and more stringent over time, and there was no provision saying that a claim had to be processed in so long. If you are a migrant worker and you know that you have to go back to India, let us say, within a certain time and I said, 'I'm sorry. The claim isn't going to be resolved in that period of time,' then there is no incentive for them to be part of it.

The second aspect of it is that, again because it is a migrant workforce, they are much more vulnerable. They were very, very scared about speaking up. I had lots of people call who asked how it worked and then they got cold feet. They said, 'I don't want to go forward. I'm too scared. I don't want to speak up. The law is this big unfriendly thing that I don't understand. I'm not going to proceed with this.' When I say 'tip of the iceberg', these are just the people who have spoken up and come forward. It is only a fraction of the entire workforce that would have been churned through 7-Eleven's entire franchise network over a year—just one year, for example.

Mr BROWN: The committee has not touched on the business model of migrant workers too much thus far. I know that Dermot will be able to pick up on this point in contract cleaning. There is a level of education among migrant workers. If you are a backpacker, you know how many hours you have to do to get your next year's worth of travel. If you have a student visa, you know that 20 hours a week is all you can do. There is the business model of exploiting those conditions of visas, around the 20 hours, especially in the contract cleaning industry. I know they will be doing 50 or 60 hours but

getting paid for 20. I know that backpackers feel isolated on the farm. They know that they have to do these hours to get their next year's worth of travel, and if they speak up that could be jeopardised. Could you expand on the model and that exploitation of migrant workers?

Mr Sivaraman: Yes. Firstly, you are right that the level of education and awareness is not that high. When you come into Australia you are told to not bring any plant food and other products or drugs, but you are not told what your rate of pay should be or anything like that. There is no education in terms of your employment rights. Secondly, what I saw through the 7-Eleven case was that the absolute worst case was that someone was getting paid 47 cents an hour. That is when you actually added up how much they got paid for the number of hours they worked.

Mr BROWN: Slavery.

Mr Sivaraman: It is effectively slavery. Let us say it is $10 an hour. They cannot make ends meet so they have to work outside of the 20-hour restriction. Then eventually they realise it is wrong, and they raise it with the employer and the employer says, 'If you raise this, I'll just go straight to border protection, the department, and you'll get deported.' They are stuck in this horrible situation where they are getting underpaid but if they speak up about it they will get deported, but to be able to live they have to continue to be underpaid. They are so vulnerable and that is why it happens.

Mr Peverill: There was a review of the corporate avoidance regulations conducted I think it was last year, and there is a fantastic piece of academic writing about migrant workers. It formed the basis of some of United Voice's submissions which we provided as part of this Maurice Blackburn submission. It is a fantastic piece of academic writing because I think what comes out in that is the two points Giri makes—that is, vulnerable workers and transient workers. When you get those two together in a low-paid contracting industry like the members I represent—contract cleaning and contract security—as Giri says, it is inescapable.

Some of the large employers out there in the contracting industry are very sophisticated. They look at the legislation—and we talked about the legislation being behind the times—and they look for those back doors. We quite often see our migrant worker members—I have had three in my office this week—who are describing to me a situation where they are working ordinary hours for their primary employer, a large cleaning contractor. The large cleaning contractor says, 'We know you can only work 20 hours. We'll now employ you under corporate structure B and corporate structure C, and we will allow you to work additional hours but you will get half the award rate. If you say anything about it, particularly to your union, you'll no longer have a job.' That is the level of sophistication. To combat that takes a great degree of precision in terms of taking that application to a federal circuit court.

Our migrant workers are the most vulnerable people in the state. United Voice, along with other unions at this table, have dedicated significant resources to trying to protect those entitlements. For those people, through no fault of their own, education will never be the remedy. They are vulnerable for a reason. Many are from non-English-speaking backgrounds. We have organisers from non-English-speaking backgrounds who are out day and night, at three o'clock in the morning, talking to any number of facilities around the CBD and the regional areas.

Just picking up on Shannon's point, this is two tiered. It is dealing with the wage recovery but it is also criminalising the actions of these business models who go out of their way to use sophisticated structures to disenfranchise some of the most vulnerable people, and I say that migrant workers are the most vulnerable.

Ms Fogarty: Just on that issue of the business model, as an example, I recently had a 457 worker approach me at the union. He was not the only one at the company, but for a period of time they had established a system. It was in between visas at some point, and there was an issue. Be it legal or not, they were paying him on an ABN—and they had set this up with other workers—and they would pay him, for example, double the rate to explain why he was still only doing 20 hours a week because he was getting paid that higher rate. When they started him on the ABN, they were paying him for a particular period of time and it was a bit of a gentleman's agreement as to what they were going to pay him.

Six months out from his return, they then sent him a bill for all that money saying, 'We just found out that there was an issue with your visa and you weren't meant to be working,' and all of those things. They sent him a bill for that entire period that he was working on an ABN because they had set up this system. Now they have terminated him from work and he has no money to get back home. He has just signed up to a new lease with his wife and child, and he is ready to return to his home country going, 'What else do I have here?'

They have set up this system whereby they take advantage of his status as not being an Australian citizen and being here on a particular type of visa or being in between visas. They used it against him when he said, 'I obviously can't pay that back.' 'We're going to tell the Department of Home Affairs' or whichever it is—'that this all happened' and get him sent back. Because it is such a legally technical area he is going, 'Am I going to be able to get back home? What is going to happen there?' He is not the only one. They are setting up really specific systems with a gentleman's agreement—even with students—saying, 'It's okay. We'll pay you double. We won't put it in writing,' and then going back to get that extra money off them six months out before they leave. This is happening with plumbers. This is a very different kind of area that we are working in. They are setting up these systems to abuse the status of these workers in an industry where I previously have not seen it before. That is the business model that they are operating on.

Mr BROWN: It is scary that it is getting into the trades now. It seems like no industry is safe. Thanks.

Mr DAMETTO: Thank you very much for coming along this afternoon. It has been devastating hearing your story, Michael. I would like to ask a question about contracts and people working on ABNs. It is not just occurring in the transport industry; it is the carpenters, the block layers, the plumbers. There are so many people out there now who are working under this system where you go out as a sole trader or you start a small company, you get an ABN and you try to get as much work as possible. I understand how they are getting around paying people this way, because they are saying, 'We'll put you on this contract. You either charge us or invoice us for the kilometres or hours.' What is the legislative silver bullet? Do we just simply legislate that everyone who drives a vehicle for transport purposes has a minimum hourly rate, whether they are on contract, full-time, casual or part-time employment? If we do that, how does that translate into the block-laying industry, the tilers and the carpenters?

Mr Sivaraman: In transport, in New South Wales it is called a contract for carriage determination power where the New South Wales Industrial Relations Commission can set the rate. Even if you are not an employee, there is still a minimum. We had the road safety review tribunal, which was doing the same thing. We had a national scheme and a state scheme. The national one has gone now. I do not think there is a silver bullet for all industries, but there are certainly answers for various industries.

Mr Biagini: For a concreter or carpenter, I would go and do that person's house for a week or maybe a month or two. The difference in this industry is that you are wearing the uniform of the company. You are told to be there every day. You do not get to put in a quote or anything with that ABN. In the building industry or other industries you call them in, they give you a quote, you accept it and they come and do the job. You have some say.

Mr DAMETTO: You have some bargaining rights.

Mr Biagini: Absolutely. You choose whether you are going to do the job or not.

Mr DAMETTO: Yes.

Mr Biagini: He is not able to quote for the work.

Mr DAMETTO: I understand the anomaly in the industry.

Mr Biagini: That is the real difference.

Mr DAMETTO: I am just trying to figure out how we fix that up.

Mr Biagini: I will go back a little bit through history about how it started and unravel it. Fifteen years ago, you had never heard of it in our industry—truck drivers on ABNs.

Mr DAMETTO: That is right.

Mr Biagini: Unless you were the designated independent contractor owning your own vehicle.

Mr DAMETTO: Yes. Thank you for that.

CHAIR: Thank you. Our time for questions has expired. Giri, I certainly was not indicating that you had taken too long before. It was just that we had a million questions and there was a lot of industrial expertise at the table that we wanted to avail ourselves of. On behalf of the committee, I thank you very much, and Maurice Blackburn, for putting in the submission and I also thank each of you. I appreciate that you represent a lot of workers. We have certainly benefited from not only having your written submission but also having you are here today. Michael, I wish you and your family well. Thank you very much for your time.

RINKEVICH, Mr Stewart, Workplace Relations Lawyer, Ai Group

RODGERS, Mr Shane, Head Queensland, Ai Group

CHAIR: I now welcome representatives from the Ai Group. Thank you very much for your submission to the inquiry. I invite you to make some opening comments of up to five minutes and then we will open for questions.

Mr Rodgers: Thank you for the opportunity to appear. We appreciate it. Firstly, the Ai Group works very hard to support and encourage lawful workplace practices and we do not condone any deliberate underpayment of wages or other entitlements. I wanted to say that for the record. Of course, we condemn any exploitation of workers and particularly the exploitation of vulnerable workers.

From our experience, the vast majority of businesses devote considerable time and effort to ensuring that they meet their remuneration obligations. This is often not easy in a complex system, particularly for small businesses without specialist resources. In this context, we believe that the very notion of having an inquiry based on an emotive and loaded buzz term like 'wage theft' is not the best way to have a balanced community discussion on wage compliance. It would be a very retrograde step for us to start branding our business community as thieves and criminals if they make genuine mistakes in their payroll. This is implied and very possible under the very broad definition of 'wage theft' in the department of industrial relations reference paper produced as a companion to the terms of reference. Can you imagine the impact on a mum-and-pop business who mess up their pay rates and then lie awake at night wondering if they will face criminal charges because they will have to prove that it was not deliberate?

Moving the underpayment of wages and entitlements into the criminal realm, as implied in the term 'theft', goes against the history of industrial relations law in Australia and the 'balanced framework for cooperative and productive workplace relations' that the Fair Work Act sought to create. We note that there are already very substantive penalties for any deliberate and systemic underpayment of wages for both individuals and companies. There is also a robust system to deal with worker complaints that seems quite effective in dealing with complaints quickly. The evidence also suggests that once employers are made aware of breaches they tend to work hard to become compliant.

We have also made great strides as a nation in enacting a national fair work framework to avoid inconsistency across jurisdictions. This was supported by a previous Queensland Labor government when the legislation to enact Fair Work was introduced in 2009. The last thing we need is an even more complex system through the state government going alone on new wage compliance measures. We are urging the committee to support the people who employ Queenslanders and work constructively with them to keep improving the industrial relations system and wage compliance. We also implore you not to make life even harder for our small business sector, which is already drowning in complexity.

There are very good reasons Australia has traditionally kept industrial relations in the civil realm. It is a moving feast of decisions and precedents overlaid on an already complex system where even those with good intentions can come unstuck. The last thing this country needs is a return to a them-and-us mentality from a different era and for us to drive a wedge between employers and employees. We also need to avoid ever more legislation that makes life more complicated and perilous for law-abiding businesses while trying to discourage the practices of a relatively small proportion of companies that do the wrong thing. Thank you.

CHAIR: Thank you for your submission and thank you for your opening statement. I will open with some questions and then hand over to my colleagues. Thank you for the opportunity to question you, because I think it is really important that we have employer representative groups as well as industrial organisations coming forward. It is really important that we have that mix. In my electorate I represent over 4,000 SMEs. Many of them fall under your coverage, by the nature of my electorate, which is significantly manufacturing—postal, transport and warehousing.

Firstly, I would like to put on the record that we appreciate that a large and important part of this inquiry is on those who do the wrong thing wilfully and intentionally. That has been a discussion throughout the day. I appreciate that you have not been able to be here for that. There will always be errors and unintentional errors that are fixed with good intent or good faith between employee and employer. That is not the subject of what we are looking at closely. Where there is intent to wilfully do so is the greater issue. Would you say that those employers who wilfully and recklessly underpay employees undermine the competitiveness of the industries that you represent?

Mr Rodgers: Yes, I think that is absolutely true. I think that is why we are not defending people who do the wrong thing. The biggest danger in this whole process is that when we get into the discussion around theft that takes things into a very different realm. There is a big difference between making sure that there are adequate measures to stop people doing the wrong thing and major disincentives and making that a criminal offence of theft or taking it into the criminal realm when it has always been inside the civil realm. That is really what we are most opposed to. We certainly have no problem with laws and legislation that create a huge disincentive for people who do the wrong thing. We do not want to push this into another place where we have a whole lot of unintended consequences and we end up, particularly with small business, as you point out, in a world of worry and possibly not investing or employing anymore because they are not game to.

CHAIR: If people are stealing from the organisation they work for, I think theft is clearly defined. They take something that is not theirs. In a workplace environment, if an employer was intentionally withholding sums of money that had been rightfully earned by an employee, what would you call that if not theft?

Mr Rodgers: Theft by its nature is a common word in criminal law land. I am not a lawyer, but the definition of 'theft' is basically the stealing of a thing with an intention and the thing is there to be taken. It is quite a clear thing. When you get into the wages realm, what you are really saying is that somebody not paying someone at a level that they should be paying them based on their best reading of the requirements under an award or under an act. It is not stealing a thing so much that exists; it is paying someone at a rate that is not commensurate with what is believed or deemed under an award or legislation to be the correct rate. It is a different thing. It is not theft in that sense. It is getting into a dangerous area.

There are very good reasons industrial relations has always been in the civil realm. There are so many grey areas. Both the major parties at the federal level support this at the moment. They say that industrial relations is rightly in the civil realm and the nature of it is such that that is the best place. It is fair enough to put in disincentives for people doing the wrong thing in that realm, which has happened under changes to the fair work legislation last year. It is a very different thing to move into the criminal realm with all the risks that come with that.

CHAIR: Following on from that, if you were employed and they withheld your wages in their entirety, what would you call that?

Mr Rodgers: I would call that cause for me to enact a system to do something about that. Systems exist already to stop that from happening. There are places that people can go if they are being paid the wrong thing. In the vast majority of cases when that happens it is flagged to an employer, it is checked out, they get advice and if they are doing the wrong thing they fix it. If they are not doing the right thing, there are other things that can kick in and other things that can happen under Fair Work. It is not as if that does not happen now and it is not as if there is no remedy for that right now.

CHAIR: I will come to that next. I would like to differentiate between those examples where there is clear intent, because I know that errors can happen. Errors have happened in my previous employment, and where there is the will between the employer and the employee they can easily be fixed. That is not where my line of questioning goes. This is about wilful intent to withhold something that you are rightfully entitled to so that you can feed your family and cover your bills. It is a far more emotive area, and I appreciate your comment with regard to the emotiveness of the word.

With regard to your submission at page 5 you say there are clear processes, and you said there is a robust system to deal with the matter. Earlier today we heard young people talk about their experiences and, just to let you know, those situations did not involve unintentional errors. They were talking about situations where there was intent. Can you describe the robust system that you believe exists? Your submission makes reference to the Fair Work Ombudsman, who I would argue audits less than one per cent of Australian businesses.

Mr Rodgers: I suppose there are two different ways of looking at this. 'Audit' suggests that you assume a lot of bad things are going on and you have a process to check everybody. In a tax context, that would be like where the tax office audits everybody as distinct from just auditing the fringes to try and pick up examples or go where there might be a higher level of something going on. It is a little bit the same. I am not sure it is ever intended that you would audit everything, because that would be impossible. The intention is to have a process whereby you audit where you see flashing lights or you investigate where there is a complaint. With these systems I think that is the only way they can ever work. That is the way it works now. I think under Fair Work and the Fair Work Ombudsman the process to do that is robust. The statistics would suggest that, where complaints are made and dealt with, most of them are dealt with very quickly and most of them are resolved fairly quickly.

It is a different issue completely to ask whether Fair Work has enough resources or whether there are enough investigations done under Fair Work. That is a totally different discussion as to whether this should be taken right out of this realm and be called wage theft and exist in a criminal context. They are totally different conversations. We are worried about going out there because we think a lot of people will get caught out in that. Typically, what will happen is what has happened with a lot of other pieces with legislation. What actually happens is that law-abiding, hardworking businesspeople get caught up in a deeper and deeper regulatory regime that does not actually achieve its core objective and increases the risk and complexity of doing business. That is what we are worried about.

CHAIR: I would also state that obviously this inquiry is a reference from the House—we have not named it—and our terms of reference are significantly broad, so there is no preconceived notion that we are moving into the criminal space and my comments to you about wage theft are general in nature.

With regard to the Fair Work Ombudsman, I think my concern here is correct. As you have said, if there is a flag then you go and audit the industry. It shows here that, on some of the statistics, half a per cent of businesses were audited, but when audits have been carried out by the Fair Work Ombudsman we have found a very high level of noncompliance. I am sure others will raise this concerning sectors like hospitality, and I appreciate that you do not represent them. I think my greatest concern is that there are a lot of hardworking, passionate and reputable business owners—I represent many of them in my electorate, and proudly so; I met with 100 of them just last week at a breakfast—who are also upset by the sorts of stories coming out which have been proven by investigations to be undermining those who would wish to do well. This business model of not doing the right thing is undercutting their capacity to be competitive in the current economic environment. I know that you have spoken strongly against the concept of wage theft, but I would think you would speak equally strongly against that on behalf of your industry.

Mr Rodgers: Yes, absolutely. We do not condone people doing the wrong thing. What we are trying to do is concentrate on how can you encourage people to do the right thing, because that is where most people are, and how you can get a robust system that has sufficient disincentive to do the wrong thing. Fair Work is not perfect, but it is a step towards trying to get a consistent national system to try to give workers the protections they need as well as give businesses some consistency so they can get a consistent reading on these things and work out what to do. You saw what happened in the case of Maurice Blackburn. They are a legal firm which represents workers who claim to have been underpaid, and then they ended up getting caught for underpaying. Even in their public comments afterwards they said, 'We made a pretty generous interpretation of whether we had to pay it or not, but we paid it anyway.' When you have people who are specialists in the field who do not understand, I am not really sure how normal small businesses are ever supposed to get to the position where they can be absolutely sure they are doing the right thing.

Yes, people who do the wrong thing are definitely undermining people who are doing the right thing. The point is that most businesses are trying to do the right thing. A lot of the ones who are found to be noncompliant are not deliberately noncompliant; they are noncompliant because they read something the wrong way or they did not know about something. In some industries there are 20 acts you need to be across, and maybe they missed something on the way through. It happens all the time. It is very complex.

If you get to the stage where it becomes a criminal situation—I appreciate you say that you are not necessarily going there and I guess we are trying to avoid that—where someone has done something and it subsequently is found to be the wrong thing, is that a deliberate breach or is that not a deliberate breach? How do you prove something is deliberate? You almost have to know what is going on in someone's mind. Where you have a conspiracy and witnesses around doing the wrong thing, sure, you can prove that. Otherwise, if you end up in a situation where someone is underpaid and an accusation is made that it was deliberate, if it is in the criminal realm then you have a criminal investigation. You could be a mum-and-dad business trying your best to keep across all of these laws that come through and still be stuck with lying awake at night wondering if you are going to be charged with a criminal offence because you made a mistake. That is what we want to avoid.

Mrs STUCKEY: Welcome, Shane and Stewart. I remember well your former Ai Group head who sadly passed away.

We have been here all day listening to advocates who have been in favour of criminalising employers who steal wages. I certainly would concur with you: none of us condone that. However, you are the first group that we have heard from who actually represent businesses small, large and medium. Do you have any alternative proposals for increasing employer compliance and best practice

regarding workers' entitlements and pay? It has also been said by some submitters that better education is required. Having also acknowledged that some small businesses have hundreds of regulations and licences to pay and that it is difficult to keep up with all of those, how can that also be improved? I am sorry if that is a double- or triple-barrelled question.

Mr Rodgers: It is a good question. This area has always been complex.

Mrs STUCKEY: We all agree that something needs to be done.

Mr Rodgers: Yes. Interestingly, when it becomes a big issue we tend to frame it in terms of, 'Hey, we've discovered a big problem.' Part of the reason we know now that this is a big issue and it is happening a lot is that a lot of people have been caught. There have been a lot of high-profile cases. It has received a lot more time and attention. There are parliamentary inquiries. That has happened because there is a whole lot more attention on the issue. That in itself is creating greater awareness. There would not be too many employers in this country who would not be watching what has happened in various cases and saying, 'Gee, I'd better double-check that we're okay here.' There is a thing about saying that the system must be broken because we are discovering all those things, but it can just as easily be proof that the system is starting to work, these issues are now receiving attention, Fair Work is starting to bite and cases are starting to go through. We have already seen changes to the Fair Work Act which made the penalties heavier in situations where you have widespread malfeasance, so that was done as an evolution of Fair Work.

I think there is already an evolutionary process happening within the civil realm and the industrial relations realm to try to improve it all the time. Every time we get a case that does not look like it is properly covered, there is an ability then to amend the laws and keep things going within a consistent framework. What we do not want to do is break that consistent framework and go off in each state and do completely different things and confuse the heck out of everybody. I think the point about education is right. I think that is the biggest problem, to be honest. Not only is it education in a general sense around what your requirements are but it is actually the specific knowledge and understanding and the ability to read quite complex things to know whether you are doing the right thing or not.

I have been in various businesses, and even in large businesses you can look at what you need to pay somebody and it can be quite hard because you have awards to contend with. Sometimes you have lapsed enterprise agreements and you have to work out what your default instrument is. You have to work out where new acts fit in, and increasingly the labour force is evolving so quickly that trying to even work out the categorisation of a particular employee under the right award is a very, very complex thing. Rightly, you need to keep education going in a general sense so that people are aware that they have obligations and there are things they need to know. Then off the back of that, people who deliberately do the wrong thing—which we would say is a very small group in relative terms—need to be absolutely sure that if they do the wrong thing there will be consequences.

Mrs STUCKEY: I refer to the Fair Work (Protecting Vulnerable Workers) Act 2017, which has already been mentioned. Can you see any legislative gaps that need to be addressed as part of this inquiry? We are talking about having a national approach rather than a state-by-state approach. Are there any gaps that you can see?

Mr Rodgers: It is quite a complex body of legislation and there are lots of things, so I will just talk in general terms. For a start, it is only a relatively new piece of legislation so we have not really been able to see the full effect of it yet. There is a bit of an element of, 'Let these things go and see if it works. If not, keep going.' I think in the franchise area we have made submissions to parliamentary inquiries elsewhere to say that the ability of franchisors to deal with the bad behaviour of franchisees is probably not strong enough under that act. I think in one case it took two years to enact a single case against a franchisee. There is an assumption in franchise world that franchisors are always big companies. That is not always the case. Often they are not as big and powerful as you might think in terms of being able to deal with behaviour at the franchisee level.

There are changes all the time. We have been around since the 1800s, and our entire world is monitoring these things, looking at what is working and constantly putting in policy submissions to try to improve things. That is an ongoing thing. I am more than happy to provide the committee with other things we might have as far as specifics that we have done work on policy wise, but it is probably not a good idea for me to rattle those off off the top of my head.

Mr HEALY: Shane and Stewart, it is great to see you here this afternoon. As you have heard from several of us, we have been sitting here for a while. Shane, I have also worked for a number of large and small companies over my 54 years on this planet, and I hear some of the things that you have said. I can tell that you are not a liar because of the way you have answered some of those

questions in relation to the nature of inquiries. First and foremost, I think it is important that we recognise the importance of the majority of small, big and medium sized businesses that are doing the right thing. I have found your robust start very enthusiastic but potentially misguided. We are talking about people's wages not being paid. Whilst I share your enthusiasm, we are not talking about anything; we are listening to what is happening out there.

When the chair asked the question about page 3 of your submission where you state that the underpayment of wages should not be labelled as theft, she asked what you would therefore consider it to be. I was a little concerned because you gave another wording. In this process we are going to be identifying people who might make the odd mistake, and we are not out to castigate people or do anything like that. I personally believe that today we have heard evidence—and I have seen it in the past personally—where there is intent, so there needs to be a lot more done in that space. I cannot agree with a lot of the things you have said. I am concerned that you are taking the view that it does not happen that much. I would like to ask again: on page 3 of your submission you state that the underpayment of wages should not be labelled as theft. What would you consider to be captured in the definition of wage theft?

Mr Rodgers: I think our starting point is that we are concerned about the term 'wage theft'.

Mr HEALY: I get that. That is cool.

Mr Rodgers: We are very happy to encourage robust community discussion around this issue, because clearly there are examples of noncompliance with regard to wages and salary. There always has been and there still is. The question you need to ask is: what is the right way to deal with it? I do not think anyone is questioning that it happens, but you have to remember that 'wage theft' started off as a campaigning term. It is a very loaded term and it is an emotive term. It directs people to the realm of thievery and criminality.

Mr HEALY: I get that, but for a very small percentage that may be what it is. That will be determined by a court or a judge if the process goes that far. I will ask the chair to indicate to the Clerk of the Parliament that we may need to soften the wording, but at the core of it is the concept or the reality of people not getting paid. I know I am taking too long, sorry. I just have not heard anything from you that you accept that, yes, it happens and we should do something about it. That is where I am coming from.

Mr Rodgers: Just to be clear: yes, it happens and we accept that something has to be done about that. That is a given.

Mr HEALY: Excellent.

Mr Rodgers: If there are laws that require you to do something and somebody does not comply with those laws, by definition they have broken the law. They should comply with the law.

Mr HEALY: That is all I need to hear, Shane.

CHAIR: I would like to put on the record that we cannot petition the Clerk and change a reference to our committee that the House has voted on.

Mr HEALY: I accept the wording.

CHAIR: It does not quite work that way. We will move on.

Mrs WILSON: Do you collect or do you have any data about queries that you get from business owners in relation to assisting them with any wage issues regarding employee entitlements and pay?

Mr Rodgers: We are happy to provide you with that data. The way we are set up is that there are two levels of support. Our primary level of support for small business is a hotline, which gets thousands and thousands of calls. They are primarily members seeking clarification on HR and workplace relations issues. Yes, all day every day we get that sort of thing. We will have statistics on that which I can provide if they are useful.

Mrs WILSON: We will place that on notice, if that is okay, Chair.

CHAIR: Of course.

Mr Rodgers: We are more than happy to do that. That is the first level. That is really people picking up the phone saying, 'I have this issue. I have this query. What award do we go to?' That is a fairly typical thing that we do all day every day. If the issue gets more complicated then it would end up in Stewart's area. That would require either a conciliation or a deeper process when things are not quite so cut and dried. That is an all day every day thing. Small business is constantly trying to understand it.

Mrs WILSON: I have been a small business owner. I was part of MTAQ. Whenever wage increases came through for our employees they would send us the updated wages. This is going back 20-odd years. Is that a process that happens within your organisation as well?

Mr Rodgers: Yes, absolutely. We do that continuously. At the moment there is so much happening in the industrial relations space. It is continuous. Every month there are lots and lots of things we need to update employers on. There is always a lot, but at the moment there is a lot happening in that space and we are constantly trying to keep people informed about what is going on. That is our point about complexity. We keep up with it because we have to but, if you are in an individual business, trying to keep up with all of that is very difficult.

Mr BROWN: Shane, you keep saying that industrial relations is always civil. Do you stand by that statement? You have said it a couple of times in answers and in your opening statement.

Mr Rodgers: You mean in the civil realm rather than in the criminal realm?

Mr BROWN: Yes.

Mr Rodgers: It mostly is. There are things at the fringes that are not.

Mr BROWN: It is 'mostly' now, is it?

Mr Rodgers: In a general sense.

Mr BROWN: Section 398 of the Criminal Code deals with stealing by clerks and servants. That is in the Criminal Code. That is industrial relations. That is not in the civil realm, is it?

Mr Rodgers: Can you explain to me why that is industrial relations?

Mr BROWN: It is stealing by clerks and servants. It is a direct relationship between the employer and the employee. Justice McPherson lays it out nicely in the Crown v Bryant—

... stealing by a servant is treated as a serious offence because it involves a breach of fidelity, as well as the use or abuse in defrauding the employer as in this case of opportunities and information which the employment inevitably affords.

Why shouldn't that apply in the opposite way? Why shouldn't that protection be afforded to the employee from the employer?

Mr Rodgers: The point I made earlier is that theft in that sense is the taking of a thing. Stealing by a servant has a particular category. I do not know the background of that and I am not a lawyer, but that has been around for some time. That is the stealing of a thing, if you like.

Mr BROWN: You do not believe that money is a thing—that wages are a thing?

Mr Rodgers: The point about the wages is that it is not the same take from there to there. It is paying someone at the wrong level.

Mr BROWN: Taking from the till is taking money out but taking wages isn't?

Mr Rodgers: The point I was making earlier is that it is not that simple. You do not go to someone's back pocket and steal their wages. In the industrial relations realm it is trying to set the level at the right level based on the appropriate instrument, the appropriate acts, the appropriate provisions, the appropriate contract. That requires a degree of interpretation around what that is. In most cases if somebody gets that wrong it is because they have misinterpreted it. In some cases it is because it is deliberate.

It is far more complex than the act of theft as it currently stands in criminal law. I take your point: what you are describing is probably the biggest anomaly, to be honest, in the system. I do not know the history of that in the legislature, but it comes up all the time. The unusual part of that is 'stealing by a servant' which has a connotation around workplaces, but I think everybody in general in Australia has accepted that in almost every case the other aspects of industrial relations are in the civil realm and that is supported nationally by both political parties.

Mr BROWN: Except for the employee. In your submission you are concerned about the term 'wage theft'. You are a registered organisation under the Fair Work Act; is that correct?

Mr Rinkevich: Yes, under the Fair Work (Registered Organisations) Act.

Mr BROWN: If one of your members comes to you and says, 'A competitor down the road'—who may not be an Ai member but is in the same industry—'is paying well below the award and I am getting beaten on contracts'—and we have submissions on that—you would want the power under the Fair Work Act to inspect the wages to uphold your member's rights, wouldn't you?

Mr Rinkevich: The issue there goes to what we were talking about before—firstly, the understanding. Yes, it may be a competitor but as to whether or not the employees are classified under the same industrial instrument, under the same classification—it is a complex issue. A

layperson could not hand on heart categorically say, 'Your employees are being paid less than mine; therefore, that is wage theft.' There is already an ability under the Fair Work Act that if an employee had a concern they could go to their union or go to the Fair Work Ombudsman and those time and wages records could be inspected to find out if there was a discrepancy with the industrial instrument.

Mr BROWN: You are saying that you do not want the power to stand up for your members who are doing the right thing?

Mr Rinkevich: No, I say that power already exists. If one of our employers—

Mr BROWN: You do not have the power to inspect—

Mr Rinkevich: I personally would not want the power to be able to go and inspect another employer's records if they were not a member of Ai Group.

Mr BROWN: Why? If they are cheating your member out of contracts, which we have submissions on, why wouldn't you want to stand up for your member?

Mr Rinkevich: We do stand up for our member. As I said, I would first have the discussion with our member about the assumptions they are making as to whether or not that employer is doing the wrong thing.

Mr BROWN: I do not know if you have read all of the submissions but we have submissions where good businesses are losing out on contracts because of wage theft from other businesses. You are saying to me that you do not want that power to be able to enforce it for your members; is that correct?

Mr Rodgers: Sorry, can I just clarify that? Are you talking about us having the power to go to another employer—

Mr BROWN: Yes, to inspect the time and wages records to uphold your member's right to make sure they are doing the right thing.

Mr Rodgers: Just to clarify, you are asking whether we want the power to go to a completely different employer and be able to access their records?

Mr BROWN: Yes, that is correct.

Mr Rodgers: I am not sure why we would want that power versus going to the appropriate instrument or the appropriate body with the investigative powers to do something about that.

Mr BROWN: Because you want to uphold your member's right to pay the correct wage which upholds the industry's good standing.

Mr Rodgers: Aren't you talking about an organisation having the power to go and look at the books of another organisation? That is getting into some fairly fraught areas, isn't it?

Mrs STUCKEY: That is what unions do.

Mr BROWN: You are an industry registered organisation.

Mrs WILSON: They are not a union.

Mr BROWN: They are. They are a union of employers. That is what I am trying to get at. If you want to uphold your industry and make sure that your industry has good employers who are paying the right rate, I thought you would want the power to be able to inspect those doing the wrong thing.

Mr Rodgers: I think what we would want is a robust system so that when people do the wrong thing there is a system that comes in and allows a complaint to be made and an investigation to occur and something to be done about it. I think that is what we all want, isn't it?

Mr BROWN: I am disheartened by your submission because the main focus of it is that you are concerned about the term 'wage theft'. It seems to me that you are burying your head in the sand. A couple of points in your submission really say to me that you would rather see wage theft as a model for Queensland to somehow keep employment high. Your submission states—

> The trend unemployment rate in Queensland was above the national average in June 2018 at 6.1% ... It is essential that Queensland laws encourage businesses to invest and employ.

If we go ahead and legislate for wage theft as a crime, you are saying that investment in employment will stop.

Mr Rodgers: I want to make our submission absolutely clear. You have to remember that the starting point we have on this is the terms of reference and a departmental briefing paper that outlines the general issues in Queensland. In that briefing paper the definition of 'wage theft' does not even mention the word 'deliberate'. The definition of 'wage theft', if you read it on page 17, is 'any

underpayment of wages and entitlements'. That is our starting point. When it comes to the inquiry and putting in a submission, that is what we read. Our starting point is that at the moment the definition of 'wage theft' does not even say 'deliberate underpayment'; it just says 'underpayment'. That is our starting point. Then we have the term 'wage theft', which is a buzz term that the union movement used as a campaigning term that has now been picked up by a parliamentary inquiry, so straightaway it is loaded. Straightaway it is loaded towards a belief around a particular behaviour.

When we were doing our submission, we looked at the two things that work in tandem. We are saying, 'We have the risk here that we are moving into a criminal realm. There is no mention of "deliberate" in the only definition available to us.' That is our starting point because that is our biggest fear. There are all of these other issues around compliance and getting that right and making sure small business are informed, but the base issue of not ending up somewhere down the track with a criminal charge of theft based on someone making a mistake and underpaying someone is the first thing we want to get off the table. That is why there is a slight bent towards that in our submission. We want to make sure that that is absolutely off the table because that would be a terrible, terrible thing for the small business community of Queensland.

Mr BROWN: In your opening remarks you said that the vast majority of businesses are doing the right thing, but we see Fair Work report after report saying that compliance is well over 50 per cent—we have 70 per cent and 60 per cent in industries. Do you conclude that there is plenty of evidence that has led us to have an inquiry—that it is not the vast majority who are doing the right thing?

Mr Rodgers: At the end of the day, none of us know the exact figure. We deal with this all day every day. The experience we have is that mostly we have businesses coming to us saying, 'We need to pay this person. Can we check what award it is under?' They are trying to do the right thing. People do not have a starting point of trying to rip off their employees. Most businesses we deal with are family businesses. They have good relationships with their employees. They are trying to pay them the right amount. They are trying to do the right thing, and they have a lot of things that they have to get through in a day.

We do not really know. In the past 12 months this issue has become more high profile. That is probably a good thing. More people have come forward. I think a lot more workers know their rights. I think part of the reason that Fair Work is now inundated is that everyone is saying, 'I know about this now.' You have more employees coming forward saying, 'I know my rights. I know what to do now.' Employers are saying, 'People are being caught out here. I better double-check that I am doing the right thing.' There is a lot more activity. As a result of that, we have almost a frenzy of things going on at the moment. We have absolutely no idea of the level of it really, except from our own anecdotal evidence that people we deal with seem to want to do the right thing and that most of this happens at the fringes.

If you take a whole lot of case studies, which I am sure you have had today, one after another, there are some horrible stories. There are some terrible things that have happened to employees. There is absolutely no doubt about that. The point is that we do not know whether it is a small subset and a lot coming forward, which if you see in a concentrated form can look horrendous, or whether in a state where we have nearly two million employers it is at the fringes, which is the most likely thing based on everything we know.

Mr DAMETTO: I want to make it clear that I am 100 per cent against the underpayment of employees or contractors out there. When the committee kicked off discussions about this inquiry I did bring up the wording to the chair myself. I felt that it was quite strongly worded and alluded to people always doing the wrong thing when it comes to wage theft. That did concern me at first. It was then explained to me why the term came about and why we are going to be using that term. I felt a little more comfortable after it was explained to me.

One thing that does worry me, though, is pushing things into the Criminal Code. Withholding wages may be looked at as wage theft, but at the same time when I do not pay my bill to Telstra, if I am withholding cash from Telstra, am I stealing from Telstra? Am I slipping into the realm of the Criminal Code? It is a little bit of a worry for me.

My suggestion—and I would like to hear a response from you on this—is that perhaps we have to push this back to a government department when it comes to telling employers what they have to pay their workers. At the moment, like you said, it is very complex and it is very hard. As a past employer myself, looking at what my employees were doing in a day's work, it was a little bit hard to figure out what I was supposed to pay them. Perhaps a department could advise us on what we need to pay people. Can you comment on that?

Mr Rodgers: I think in general, yes. I think the more information that is available to people, the better it is. One of the unions in Victoria has set up a really good hotline and website that allows a worker to enter their own information and it can come back with quality information. That works on both sides, because the more an employer knows and the more an employee knows the more you can meet in the middle. As far as safe ground for an employee is concerned, if they are worried about raising something they can go somewhere safe to get good, quality information. If they want, they can go back to their employer before they go to Fair Work. I think the more information that is available the better.

As to whether that is a government department, it could be Fair Work. It could be that there needs to be more resourcing in certain places around education. In some areas there are probably cultural issues. It is hard enough if English is your first language and you have grown up in the Australian system. Imagine coming from overseas to very different systems and trying to run a small business and understand it. I think there is a lot of work to be done, to be honest, before you get to the big stick at the other end. There is a whole lot of work just to make sure that people who want to do the right thing have the tools to do that.

CHAIR: Our time for questions has expired. Thank you, Shane and Stewart, for writing to the inquiry. It is really important that we have employer groups. I appreciate the information you have put on the record about the information you are giving to employers as a service to educate and inform. That is something we have heard today and it is so important, and that is educating people and employers about the important legislation in this space. Thank you for that and thank you for your time today.

CARROLL, Ms Lindsay, Legal Practitioner and Director, National Retail Association

CHAIR: Welcome, Lindsay. I appreciate that you are from the National Retail Association. Like the Ai Group before you, we appreciate bodies of your nature representing employers' interests. Would you like to make an opening statement of up to five minutes and then we will open for questions?

Ms Carroll: Thank you for the opportunity to appear today. Our CEO, Dominique Lamb, sends her apologies. She would have appeared but she is otherwise engaged.

The National Retail Association is a registered organisation under the federal Fair Work (Registered Organisations) Act and under the Industrial Relations Act in Queensland. In other words, we are a union for employers. We represent employers in the retail, fast-food, quick service, and hair and beauty industries across Australia. We have about 5½ thousand members across Australia. We represent about 19,000 to 20,000 shopfronts and their attendant employees across the country. Our membership encompasses some of the largest retail enterprises in the country and a plethora of small to medium sized businesses. At all times we have advocated for the lawful operation of business to ensure competitive fairness and, in broader terms, a fair go all round. I supervise a team of workplace relations advisers and lawyers who work every day with our membership to help them ensure they are meeting their minimum compliance obligations. Education is a big part of what we do in our organisation.

The Fair Work Ombudsman's audit data shows that employers who are a member of an industry association are far less likely to face wage compliance issues. The NRA has significant experience in helping employers to identify and resolve wage underpayments. In our experience, and in the majority of cases, these underpayments are caused by an employer's failure to understand their obligations in what is a highly complex area of regulation. On a smaller number of occasions, wage noncompliance is caused by deliberate actions of unscrupulous individuals who set out with the clear intention of defrauding their employees. This is in our experience, though, a rarity among employers and certainly a rarity amongst our membership.

Our submissions go to great lengths to point out that on the data available Queensland has one of the best records in the country when it comes to people getting paid correctly. Queensland has a noncompliance rate of 12 per cent compared with the national average of 17 per cent. At the public briefing to this inquiry, and no doubt over the course of today, we will probably hear figures like 69 per cent of franchisees in Brisbane not being compliant with workplace laws. We very strongly urge the committee to note that that particular audit of the Fair Work Ombudsman was based on a very small sample size of around 70 businesses. Their usual audit sample size is commonly a couple of hundred businesses—normally 400 to 500.

Our submission also makes the point that wage theft will never be eradicated, which is a logical conclusion when we consider that the issue is caused by alternatively human error or deliberate deceit. It seems the press has taken a liking to that part of our submission this week. I think it would be naive of me to sit here and tell you that there is a way we can eliminate wage noncompliance, particularly in our industry. Typically, the types of non-deliberate errors that we see on a reasonably regular basis are the application of the wrong modern award, misclassification of employees under a modern award and employers not understanding the circumstances when allowances, loadings and penalties are to apply and be paid. In that vein, we support the view of Ai Group which was published earlier in the week and which we just heard to the effect that non-deliberate errors or mistakes by employers should not be criminalised. I heard what you said earlier to the effect that that is not what the committee intends to do.

CHAIR: Sorry, it is not the committee's intention because we are not even at the point of knowing what we intend to do yet.

Mr HEALY: We are collecting data.

Ms Carroll: Understood. We would support criminalisation of wage theft only if it was limited to circumstances where the employer knowingly and deliberately declined to pay employees of all of their entitlements. Errors of understanding and mathematics should not be subject to criminal sanction. Further, if this course was proposed, some consideration would need to be given to the potential constitutional problem of criminalising at a state level a breach of the federal act which under that act specifies as only being a civil offence. I am not a constitutional law expert. Maybe it is something that the Queensland Law Society—

CHAIR: We had them in earlier.

Ms Carroll:—could talk to, but there is that issue. That said, we are strongly of the view that one underpayment is one too many. We are a very strong advocate for greater education for employers to ensure that honest mistakes are reduced and also for employees so that the very few unscrupulous employers out there have less ability to get away with unlawful treatment of their staff and unfair advantage over law-abiding competing businesses.

To be clear, the call for greater education, particularly of workers, is not meant as an excuse for noncompliant behaviour by employers. Rather, it recognises that enforcement agencies such as the Fair Work Ombudsman can only take action if noncompliance is brought to their attention. If employees are unable to recognise noncompliant behaviours, that avenue of intelligence gathering is lost.

In our view, this is due to a lack of awareness of this group of workers about their rights and entitlements in the workplace. In retail, we are the biggest employer of young people in the country. Employee and employer unions do a great job of educating their members, with very limited resources I should add, but we know that membership of employee unions has sharply declined in recent years. While the Fair Work Act allows workers to more readily have their rights enforced, they can only do so if they are aware that those mechanisms exist and have reason to activate them. We are aware that schools provide basic education with respect to the necessity to have a tax file number. Some schools go as far as to provide training or education on workplace skills, but we do not know of any formalised attempt to educate young people about their rights under the fair work system, even in formal traineeships and apprenticeships.

We are strongly of the view that we could significantly reduce both accidental underpayments and deliberate wage theft if our young people have a stronger understanding of their workplace rights and the confidence to enforce them at the time that they enter the workforce. For this reason, we strongly urge the relevant governments and agencies to consider options to ensure that young people are better informed about their rights and to ensure they receive fair payment for when they work.

To the point that we heard earlier about the resourcing of the federal regulator's office, we would say that for a regulator with limited resourcing they have a great prosecution success rate, but for a staff of approximately 745 people to regulate 2.2 million businesses across the country is pretty light on. We commend the Queensland government's engagement with the Fair Work Ombudsman's office to date. We think ongoing collaboration between the states and that office is essential to effective enforcement outcomes.

We reiterate the position that we have consistently taken in the past that the Fair Work Ombudsman has all the legislative powers it needs to be an effective regulator. However, a change in fiscal policy really needs to occur to allow that regulator's office to obtain the resources it needs to effectively police workplace laws. Thank you for the opportunity.

CHAIR: Thank you very much for your opening statement. Can I say how refreshing it is that you were so clear in your opening statement that this is not okay. If people are doing the wrong thing, as an industry body you do not want to see that. It clearly undermines the competitiveness of others that you are representing. I appreciate those sentiments very strongly.

I am interested in your submission and a comment made that Queensland has one of the best records. In looking at your data—specifically point 23—and those statistics, we are talking about roughly one in three in Central Queensland, one in five in Far North Queensland and one in five in inner Brisbane as being noncompliant. Whatever the intent or absence of intent behind that, I do not think it is as positive as your submission leads us to believe that Queensland is doing well. I think that is terrible, frankly. You have made the point about non-deliberate and clearly intentional wage theft, but what do we need to do better to make sure that those sorts of rates are not so high?

Ms Carroll: If you do a deeper dive into the data, a lot of wage noncompliance or noncompliance that is identified by the Fair Work Ombudsman when it does these sorts of audits is around pay slips—pay slips not saying what they need to and pay slips not being given when they ought to have been. Certainly these figures are not great and, as I said, one underpayment is one too many, but these statistics are not necessarily representative of the fact that people are being systematically underpaid. I am not sure if that answers your question.

CHAIR: It goes to it, but pay slips in my view are a very simple thing for an organisation to provide and they should be providing it. Why is it so prevalent that they are not? You talked about education for workers and we will come to that, but why is it that employers do not know that they need to provide some evidence that an employee has been paid?

Ms Carroll: I do not know if I can answer. Certainly within our membership, the time it comes onto our radar is anecdotally through the hotline service that we operate and things like that. If it comes onto our radar, we would of course tell them that it needs to be fixed. However, I do not know if I can comment as to why it happens.

CHAIR: When people are calling your hotline, is it perhaps attributed to the fact that they do not have electronic systems that are managing it, that they do not have those sorts of advanced systems? What sort of reasons are they giving when you question further as to why it is occurring, or you don't?

Ms Carroll: My experience is that the pay-slips issue does not come up particularly frequently. If it does, it might be because there are manual systems at play. However, even still, there are lots of small to medium businesses out there that still use manual systems and that compliantly issue pay slips on a week-to-week or fortnight-to-fortnight basis. I do not know if I can comment as to the why.

CHAIR: Your body represents a number of sectors that have been mentioned as being particular offenders in this space of noncompliance. Do you have the figures about the percentage of businesses in this industry that you represent? They pay and become members, obviously.

Ms Carroll: Yes.

CHAIR: What percentage would you represent?

Ms Carroll: That is a good question. I can try to do the maths quickly.

CHAIR: You can take it on notice if you have it back in the office. That is okay.

Ms Carroll: I will take that on notice. We have 5,500 members in different industries—the ones that I mentioned in my opening remarks. We know that there are 2.2 million businesses. The percentage of our membership as opposed to retail, quick service, hair and beauty and hardware industries is something that I can go away and come back to you about.

CHAIR: Thank you. Obviously employer organisations have a really important role to play, just as unions do, in informing workers and employers of their responsibilities to deal with some of this unintentional lack of compliance. The other thing I thought was very interesting and really positive was that you devoted quite a bit of your opening statement to the importance of workers being educated and empowered. I want to commend you on that. As an organisation that represents employers, you feel—and I agree wholeheartedly—that when workers are also educated and aware of their entitlements and responsibilities you have a better workplace relationship. I thank you for speaking strongly to that.

Ms Carroll: Absolutely. I started my career in retail, as probably many of us in the room did. If I think back to 14-year-old me, I had no idea. I suspect it is still the same for many 14-, 15- or 16-year-olds, whenever it is that they are entering the workforce these days.

CHAIR: I would second that. I worked in retail and experienced wage theft. That is why I personally joined a union and am now a member of the Labor Party and the Queensland parliament. It is important to be informed. When you are not, obviously it can have very deep impacts on young people. We had the Young Workers Hub here earlier today. I do not think you were here at that time, Lindsay.

Ms Carroll: No.

CHAIR: They were here before lunch. I appreciate that you have been here and have devoted some time to listening. They spoke just as passionately about what you are saying. They are young people who came into the room, ranging in age from maybe 18 to 22 or 23. They talked equally about the fact that when they are at school they talk about career options but they do not necessarily inform and empower young people to understand about their rights and responsibilities in the workplace. They spoke about schools and that they should educate young workers in that regard. Would you support that suggestion and premise?

Ms Carroll: Absolutely. We would also support the education of migrant workers at the time that they come into Australia and join the workforce.

CHAIR: Thank you very much.

Mrs STUCKEY: Thank you. You have covered quite a bit of my ground there, Chair. Lindsay, do not feel that we are not investing in you, but a lot of my questions have been covered. My question is probably a little more around applying the wrong modern award. In your submission you acknowledge that that is alarmingly common. We know for some of the smaller businesses it is very difficult to keep up as things change all the time. Apart from education, what would be some ways

forward to be able to improve that classification for people? It has been said that people can mistakenly underpay somebody and I would hate to see them considered a criminal because of that action. Is there anything that you think could be improved there?

Ms Carroll: Modern awards are inherently complex, particularly the classification structures in them and also whether they cover particular industries, whether they cover particular occupations, the interrelationship between those things and how modern awards apply. There are two examples that we give in our submission. I think we use the storage services award and the clerks private sector award as two examples that commonly employers in the retail industry will apply to their workforce. In fact, if the employer is engaged in the retail industry, classifications in the general retail industry award provide for classifications that pick up clerical or storage services employees and that will be the appropriate award that applies. Those are just two examples of the complexity of modern awards. The classification structures at the back of them are not intentionally vague but they are intentionally broad so as to capture lots of different things that people do in their work for a retail industry employer, for example. That can be difficult.

In terms of what we can do to improve an employer's understanding, part of what we do as an employer association or industry association on a day-to-day basis is help particularly small to medium businesses understand that and give advice on how people are covered by modern awards. Certainly, employee unions do the same for their members. Beyond broader education, I am not sure if I can suggest anything to the committee.

Mrs STUCKEY: If I had the magic pudding! The term 'classification creep' probably comes into that debate. Can you elaborate on that?

Ms Carroll: As businesses—particularly start-up retail businesses—grow rapidly, the inherent nature of the things that people do might change. Particularly in small businesses, you might be a jack-of-all-trades. How you are classified at the time that you started employment might not necessarily be reflective of all of the duties and responsibilities that you have a year or two down the track. Really, it is an employer's obligation to make sure that they are reassessing those things on a reasonably regular basis, but they may not know to or are not prompted to. Anecdotally, we know that it does not happen. Again, it is about education, I think.

Mrs STUCKEY: And joining memberships like yours?

Ms Carroll: Yes.

Mr BROWN: Firstly, Lindsay, congratulations on your submission being significantly better than that of the Ai Group. I will lead off with that. What is the minimum wage for an adult under our system?

Ms Carroll: I believe, off the top of my head, it is $18.63, but I would be guessing.

Mr BROWN: Is the National Retail Association a big organisation in the employer space?

Ms Carroll: Yes.

Mr BROWN: Do you have resources in Canberra, such as lobbyists and so on?

Ms Carroll: No. Our head office is here in Brisbane.

Mr BROWN: Do you lobby on federal legislation? This is all in the federal sphere.

Ms Carroll: Yes, we represent employers nationally. We are based here in Brisbane, but we work across all states and territories of Australia. Our membership is in all states and territories of Australia.

Mr BROWN: You might have to take this on notice, but can you show the number of times that you have written and given submissions to federal politicians, ministers or Senate hearings in which you have called upon the Fair Work Ombudsman to have increased resources?

Ms Carroll: I can take that on notice and come back to the committee with that information. Like employee unions, we regularly engage directly with the Office of the Fair Work Ombudsman through their education campaigns and campaigns that they roll out in certain sectors and regions across the country. That features in our engagement with them directly as well.

Mr BROWN: The chair has talked about rarity. Dr Peetz is a well-known academic in this field. In his paper *Debt in paradise* he outlines the Fair Work Ombudsman's study showing that 26 per cent of retail businesses did not comply with the award in regard to wage theft. Do you still categorise it as a rarity in your industry?

Ms Carroll: Yes. I have glanced at Dr Peetz's paper, but I am not familiar with the detail of that report. I am not certain to which Fair Work Ombudsman audit it refers. Certainly, the experience of wage theft within the membership of our association is a rarity.

Mr BROWN: In 2014 a colleague of yours, Stephen Cartwright, the chief executive of the New South Wales Business Chamber, was reported as saying that thousands of retailers and restaurants were paying workers in cash and striking illegal private agreements about conditions to avoid award minimums. That was an attempt to argue for cutting award minimums. It was also an admission of illegal behaviour by his constituents. Do you support that statement?

Ms Carroll: Again, I am not aware of cash payments happening within our membership, but can I categorically deny that it happens? No.

Mr BROWN: You cannot deny that, as he said, in retail there is a chance that thousands are using a business model to avoid paying award minimums?

Ms Carroll: I would deny that using cash payments is a business model in retail. I cannot deny that cash payments are occurring in retail.

Mr BROWN: What about employers striking illegal agreements with employees?

Ms Carroll: I would ask for more specificity around what that particularly means.

Mr BROWN: His submission was about a review of the retail and restaurant awards to cut award minimums. He was arguing to cut awards because, he said, retailers now are using a business model of paying in cash and striking illegal private agreements.

Ms Carroll: I am not aware of it within our membership.

Mrs WILSON: Previously we were talking about education. I have several children. All bar one of my children work in part-time jobs outside school hours. Would you suggest that parents need to stand up and be there for their children by understanding a bit more about their children's employment and wages, instead of throwing it straight back into the education system and schools? We are already seeing an overcrowded curriculum.

Ms Carroll: Anecdotally, lots of our members would tell you that parents absolutely stand up for the rights of their children. In fact, in the realm of questions around employment entitlements and management initiatives, retailers and fast-food operators will typically deal with parents as opposed to their 15- or 16-year-old employees. Parents are also small business owners. Parents are workplace relations professionals in big companies that can get it wrong as well. We know that the system is very complex and difficult to understand. Yes, I would agree with you to some extent that parents should take some responsibility and stand up for the rights of their children when they enter the workforce, but we know that that is happening. Again, I would say that it is a very complex area to navigate.

Mr HEALY: Lindsay, I echo the remarks of the chair. You have come here and stated your case very clearly. Well done. I appreciate you saying what you said, because, as we have heard today, there are different types of people not getting what they deserve. The wording might be a bit of an issue for some, but, fundamentally, that is what we are looking into. One of the big issues that came through today out a number of issues is the capacity to educate people. My view is that it needs to be the responsibility of a wide range of bodies—the government, the private sector or membership based organisations like yours. I am glad you are in Brisbane and not in Canberra. What does your organisation do to educate your members in relation to this specific matter?

Ms Carroll: That is a good question. We have initiatives running on a weekly basis as to the education that we undertake of our membership around compliance with workplace laws. Every week we publish a newsletter that will always include a component of a legal update, whether that be a case law update or something that has happened in the legislation. The most recent example of that is the introduction of family and domestic violence leave into modern awards. There is an education campaign around that. The article explains what it means and what employers are required to do from 1 August. We regularly run free training, whether that be through webinars or in person. We run a Fair Work Boot Camp campaign that is targeted at small to medium enterprises. There is an ongoing webinar series around understanding modern awards, record keeping and entitlements. We operate a hotline that is staffed by workplace relations advisers and lawyers who are available during business hours to answer questions of that nature.

Mr HEALY: How many people work at the National Retail Association?

Ms Carroll: Thirty-four.

Mr HEALY: Would we be able to get a copy of that correspondence that you are talking about that makes your members aware of, for example, some of the legislation that you referred to?

Ms Carroll: Of course.

Mr HEALY: That would be terrific.

Mr DAMETTO: Thank you very much, Lindsay, for coming along today. Once again, I echo the comments of the chair and say that I really enjoyed the sentiment of your submission, the way that it has been put together in highlighting that there is a problem with wage theft or noncompliance—however you want to put it—within the industry and that everyone is trying to work together to stamp that out. Everyone believes in a fair day's pay for a fair day's work. That definitely resonates with me. As somebody who started a small business, I found it quite hard at the start to find out all the things that I needed to do before starting a small business—everything from permits to insurance. Then I had to find out off my own bat how to put together a pay slip for somebody and what is necessary to put in that. If I had known that an association like yours was available I might have joined it. For people who do not know about these sorts of things, what can we do to educate people?

Ms Carroll: I am of the view that the Fair Work Ombudsman has a number of fantastic resources that are available online—pay calculators, resources that assist with identifying which award applies. The Fair Work Ombudsman operates a great hotline where people can go for general advice. All of those things exist, but for someone starting a new business, they have to know where to look. I think that those resources are reasonably easily able to be accessed online if you use google or something to that effect.

Mr DAMETTO: Unfortunately, they have to know where to look, because there is a sea of information out there at the moment, is there not?

Ms Carroll: Yes, that is correct.

Mr DAMETTO: This morning the Young Workers Hub supported the idea of teaching students in years 11 and 12 about workers' rights. I think we also need to be teaching kids life skills, such as opening bank accounts and superannuation. Would your organisation support that? Would it also support teaching them about opening their own small business?

Ms Carroll: Absolutely. We would wholeheartedly support initiatives like that. I hear that the curriculum is overloaded but, at the same time, we know that some of those types of initiatives exist in some schools. Certainly, we would support greater education.

CHAIR: Thank you very much. There being no further questions, we will end this session. On behalf of the committee, I thank you and your organisation, the National Retail Association, for the submission and for coming in and answering our questions today. We very much appreciate it.

Ms Carroll: Thank you.

CHAIR: You have taken a number of matters on notice. The secretariat will make contact with you to talk about how best to send us that information but also the due date.

Ms Carroll: Great. Thank you very much.

CHAIR: Thank you very much for your time. That concludes this hearing.

The committee adjourned at 4.05 pm.