

**WAGE THEFT:
REALITY FOR YOUNG WORKERS**
YOUNG WORKERS HUB SUBMISSION | JULY 2018



30 July 2018

Committee Secretary
Education, Employment
and Small Business Committee
Parliament House, George Street
Brisbane Qld 4000

Young Workers Hub
16 Peel Street, South Brisbane
Qld 4101 | ywhub.org.au

Dear Committee Secretary,

RE: WAGE THEFT INQUIRY SUBMISSION

Please find attached submissions from the Young Workers Hub (YWH) in line with the Committee's directions regarding the inquiry into wage theft in Queensland. The YWH welcomes the opportunity to contribute to this important inquiry from the perspective of young workers.

The YWH is an education, support and campaigning organisation run for youth, by youth in Queensland. The YWH operates with the support of the Queensland Council of Unions and seeks to ensure young people know their rights at work and the options available to them should they ever need assistance. Our vision is to live in a Queensland where no young worker experiences wage theft, bullying, sexual harassment or unsafe work.

The YWH is well placed to address a number of the terms of reference set by the Committee, namely:

- incidences of wage theft in Queensland, with reference also to evidence of wage theft from other parts of Australia;
- the reasons why wage theft is occurring, including whether it has become part of the business model for some organisations; and,
- whether wage theft is more likely to occur in particular industries, occupations or parts of the state or among particular cohorts of workers.

This submission details our view that current industrial laws are insufficient to address wage theft, outlines the need for young workers to understand their rights and entitlements through education programs and demonstrates that young people are a cohort of workers more likely to experience wage theft.

In order to give our submissions real application, the YWH respectfully requests that four workers appear at the Brisbane Public Hearing. Should you require any further information in relation to these submissions, please don't hesitate to contact us.

Yours sincerely,



Young Workers Hub

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Contents

Wage theft	4
The status quo	4
<i>Victoria</i>	4
<i>New South Wales</i>	5
<i>Queensland</i>	5
Instances of wage theft	5
<i>Pay Slips</i>	5
<i>Business models</i>	6
<i>Classifications</i>	7
Current enforcement	8
<i>Courts</i>	8
The effects of wage theft	8
<i>Intimidation</i>	8
<i>Economic position</i>	9
Reform	9
<i>Legislative</i>	9
<i>Education</i>	10
Recommendations	11
Appendix	12
(A) <i>Fair Work Ombudsman Pay Slip Template</i>	12
(B) <i>Case study: Molly (21) Hospitality worker</i>	13
(C) <i>Pay slip: Molly (21) Hospitality worker</i>	14
(D) <i>Pay slip: Caspar (21) Hospitality worker</i>	14
(E) <i>Case study: Siva (25) Food manufacturing worker</i>	15
(F) <i>Case study: Kate (18) Hospitality worker</i>	15

Wage theft

1. Wage theft is the term used to describe the underpayment or non-payment of wages or entitlements to a worker by an employer. The worker may be engaged directly or indirectly and provide labour as an employee or contractor. Wage theft can include the following:
 - being paid below the legal minimum hourly rate pursuant to an industrial instrument;
 - not being paid penalty rates, allowances, overtime, loadings or other entitlements; and,
 - not being paid superannuation, pay out or redundancy entitlements.

It is often manifest in the following scenarios:

- the use of withheld wages or entitlements as a security or bargain;
- the use of business structures intended to avoid legal wage minimums; and,
- the disregard for industrial instruments and laws.

The status quo

2. Media coverage on wage theft in Australia has hit record highs, detailing shocking stories of underpayment across industries and locations. Coverage out of Victoria has been particularly frequent, prompting the Victorian Government to pledge jail terms for wage theft if they are re-elected.¹

Victoria

3. During the period 2012 to 2014, the Fair Work Ombudsman (the Ombudsman) ran a National Hospitality Industry Campaign (the Report) in response to a high volume of inquiries and matters coming from the industry. The Report found 71% of employers assessed in Victoria had at least one error, with a majority of errors related to wage entitlements.²
4. A Young Workers Centre research project found one in five young workers aren't paid the minimum wage and lose an average of \$3.12 per hour.³ A Fair Work Ombudsman Audit of Food Precincts (the Audit) detailed 81% of cafes and restaurants on Victoria Street, Richmond were not compliant and the Ombudsman was 'disappointed' but not 'surprised'.⁴ This was the highest rate of breaches found in the Audit.⁵

¹ Smee, B. *Victorian Government Pledges To Introduce Jail Terms For Wage Theft*, The Guardian, May 2018.

² National Hospitality Industry Campaign, *Restaurants, Cafes and Catering Report*, Fair Work Ombudsman, June 2015 p 8.

³ Young Workers Snapshot: The Great Wage R p Off, Young Workers Centre Research Project 2016 p 4.

⁴ Edd e, R. *The Melbourne Food Strip Where Hundreds of Staff Are Underpaid*, The New Da y, Ju y 2018.

⁵ Davey, M. *Blitz On Hospitality Industry Nets \$472k For Underpaid Staff*, The Guardian, Ju y 2018.

New South Wales

5. Of the 286 businesses assessed in New South Wales in the Report, 51% of employers had at least one error in compliance.⁶ The Audit's assessment of 67 businesses in Glebe Point, New South Wales found 47, or 70% breached workplace laws.

Queensland

6. Over the two year campaign by the Ombudsman, the Report found 58% of businesses had not met all of their workplace relations obligations and the majority of errors were related to wage entitlements.⁷ In Queensland, 49% of employers assessed had at least one error. Of these errors, 44% concerned the underpayment of minimum base hourly rates, 25% related to weekend penalties and 15% were as a result of incorrect payslips.⁸ The Audit found that 44 of 73 businesses in Brisbane's Fortitude Valley, or 60%, were not compliant with workplace laws.

Instances of wage theft

7. The Report specifically noted that in Queensland a number of businesses incorrectly paid juniors, mainly due to a failure to increase their pay rates after a young workers' birthday.⁹ The Audit concluded compliance issues arose due to age and ignorance of where to get help.¹⁰ These conclusions go to the gravamen of our submissions and explain, in part, why young people are a cohort of workers who disproportionately experience wage theft.

Pay Slips

8. Pay slips provided by employers are the main way young workers find out how they have been paid for their time, including other entitlements such as superannuation and leave. *Appendix A* sets out a best practice model for employers to follow in providing pay slips to workers. It goes beyond what is required under the *Fair Work Regulations 2009* (the Regulation) to include employment status, award or agreement, classification, and annual leave.
9. These are important indicators for young people to properly understand their employment. However, businesses often ignore pay slip practice pursuant to the Regulation, let alone the template prescribed by the Ombudsman. Comparing *Appendix A* and *Appendix C*, the pay slip of Molly (21) at a Sushi Train does not list her Superannuation Fund, leave entitlements, award or agreement classification. Molly was severely underpaid:

⁶ National Hospitality Industry Campaign, Restaurants, Cafes and Catering Report, Fair Work Ombudsman, June 2015 p 7.

⁷ *Ibid* p 4.

⁸ *Ibid* p 9.

⁹ *Ibid* p 10.

¹⁰ Food Precincts Act v t es Report, Fair Work Ombudsman, July 2018.

For the entirety of my employment, despite my 18th birthday, I was paid a flat rate of \$11.81 an hour. This rate was paid irrespective of weekends or late hours of work between 7pm and 9pm.¹¹

10. A number of studies have found this form of underpayment to be the most common.¹² That is, a flat rate which disregards entitlements such as penalties, overtimes and loadings, which ought to be paid under the relevant industrial instrument. When Molly raised her situation with the Ombudsman, she was advised:

As a class 2 under the award the minimum wage for a casual at 18 was \$15.76 an hour. On Saturdays with penalty rates this becomes \$18.92 an hour and on Sunday \$22.07.

At the time, Molly's parents were 'concerned' and Molly had her 'suspicions' that she was being underpaid.¹³ Notwithstanding this, Molly experienced significant wage theft during her employment.

11. It's not uncommon for young workers to not receive pay slips at all. After a year of working at a hospitality business, Kate's (18) hourly rate was cut from \$23 per hour to \$16.62 per hour (before penalty rate cuts).¹⁵ However, Kate did not receive pay slips in the course of her employment and only noticed the change after it had occurred:

My main issue was the total lack of pay slips that meant I was wasn't empowered to question wage changes...

...I was nervous to ask in case my boss claimed he'd accidentally been over paying me (as I didn't have a pay slip to prove in writing that was my rate) and wanted to claim that money back.¹⁶

12. Without detailed, regular pay slips young workers aren't given the opportunity to understand their entitlements. This leaves young workers powerless when it comes to ensuring they are being paid correctly. Employers like Kate's know this and understand her inability to raise issues as a result. The YWH submits these can be deliberate tactics to make it easier for employers to exploit young workers without penalty.

Business models

13. Wage theft as a business model exists when it is ongoing and systematic. Examples of these models include businesses that:

- do not have a dedicated human resources or pay roll officer, despite the size of the business justifying such a position; or

¹¹ See Appendix B

¹² National Hospitality Industry Campaign, Restaurants, Cafes and Catering Report, Fair Work Ombudsman, June 2015 p 10.

¹³ See Appendix B

¹⁵ See Appendix F

¹⁶ Ibid.

- outsource work through labour hire, contract arrangements, franchisees or other entities intended to exclude the host employer from liability related to wages.

14. Perhaps the key indicator of wage theft as a business model is when it affects several workers and is not an isolated incident. This submission's worst case of underpayment relates to this at *Appendix E*. Siva was underpaid at a famous food manufacturing company between July 2016 and May 2018, along with nearly 400 of her co-workers.
15. Again, Siva experienced the most common form of underpayment – a flat rate of \$22 per hour, ignoring overtime rates, shift loadings and other legal obligations:

*Some of us had worked 22 hour long shifts with no breaks. We all just thought this was normal.*¹⁸

Following an audit of the site by the National Union of Workers, it was found Siva was underpaid \$17,616.82. The company did not provide Siva's pay slips in the legal timeframe and cases of underpayment are still ongoing at the site.

16. The YWH submits the severity of wage theft at this famous manufacturer is wage theft as a business model.

Classifications

17. If relevant awards or agreements are not listed on pay slips, it can be hard for young workers to know how they are, or ought to be, paid. *Appendix D* is the pay slip of Caspar (21) who worked at a high-end restaurant as a casual on youth rates at 15 years old. Caspar was underpaid up to \$10,000 due to his employer classifying his duties incorrectly under the *Hospitality Industry (General) Award 2010*.
18. Under the Award, Caspar was prima facie a junior employee entitled to a percentage of the adult wage. However, in the course of Caspar's employment as a waiter, he was responsible for the service of alcohol and therefore should have been paid the adult rate, not the junior rate.¹⁹ Caspar raised the issue with the Fair Work Ombudsman:

Fair work advised to take my ex employer to the small claims court or federal circuit court and didn't provide any further assistance.

19. Caspar also raised the underpayment with his employer and was told by a manager to be 'ashamed of himself'. Caspar was served correspondence from a law firm representing his employer in 2016.

¹⁸ See *Appendix E*.

¹⁹ *Hospitality Industry (General) Award 2010* at 20.1.

Current enforcement

Courts

20. The advice given to Caspar by the Ombudsman would amount to a small claim in the industrial division of the Magistrates Court or a small claim in the Federal Circuit Court. Both options would require an application fee of \$145 to \$460 and in order for Caspar to be represented by a lawyer he would require leave of the court.
21. As Caspar's claim of underpayment is below \$20,000 the court cannot issue penalty to his employer. If he was successful, the employer would be required to pay Caspar's withheld wages and entitlements. However, no referral to the regulator is required.
22. The current legal options assume young workers are in a position to:
 - pay the matter's application fee;
 - access pro bono legal assistance; and/or,
 - pay for private representation by a legal practitioner.

It is reasonable to assume most young workers who are being underpaid are not in a position, financial or otherwise, to pursue a claim according to the Ombudsman's advice.

23. To deter businesses from engaging in wage theft claims must be made easier for young workers to make and penalties strengthened. The current lack of enforcement has contributed to the prevalence of wage theft, particularly among young workers who cannot easily access remedies in the courts.

The effects of wage theft

24. Young people who experience wage theft are often in one of their first jobs and can find it hard to speak up or raise issues related to wages with their boss. This can have a number of effects on young people, ranging from their confidence levels to their economic position.

Intimidation

25. *Appendix D* illustrates why young people can find it hard to speak up, as Caspar was:
 - messaged by a representative of his employer directly;
 - served with correspondence from his employer's law firm; and,
 - told by the Ombudsman what to do, but not how to do it or where to seek support or assistance.

That is, an 18-year-old worker received legal correspondence seeking cost orders in the case of any action taken by him against his employer.

26. For a young worker, this would have been difficult to understand alone and would have had a significant effect on Caspar's confidence to pursue his employer for what he was legally owed. The employer knew, or ought to have known, that these tactics would have this effect on a young worker.
27. The YWH considers situations such as this as deliberate intimidation by employers to discourage actions being brought in relation to wage theft. As these tactics operate on assumptions of ignorance and age, young people are a cohort of workers at higher risk.

Economic position

28. For a young worker, \$17,616.82 is not an insignificant amount of money to be underpaid and can result in very different economic positions. For Siva, at *Appendix C* not having this money meant:
- taking out loans to live on over the Christmas period;
 - taking out loans to attend her Grandmother's funeral; and,
 - living pay cheque to pay cheque.
29. Wage theft on any scale has an effect on young people's independence and self-worth. It is erroneous to assume young workers are being supported by family or other income earners and can somehow 'deal with' wage theft when compared to adults.

Reform

Legislative

30. It is important that any reform targeted at employers who commit wage theft is broad enough to contemplate the variety of employment relationships young people find themselves in today. This includes being engaged by:
- the host employer directly;
 - the host employer indirectly;
 - a Labour Hire agency;
 - a franchisee;
 - an online platform; or
 - any other form of engagement.

These scenarios include engagement as a casual or permanent, as an employee or contractor.

31. Offences and penalties should be clearly and simply set out so that they are easily understood by young workers and not onerous on the part of businesses.

32. Reform should include an awareness campaign on the risks of young workers being underpaid. That is, obligations around youth rates, penalties, overtime and other entitlements.
33. Consideration ought to be given to broadening the powers and functions of the Industrial Magistrate in terms of issuing penalties and orders specifically relating to wage theft across jurisdictions.

Education

34. Legislative reform will go some of the way to reducing the prevalence of wage theft among young people in Queensland. However, the mere existence of laws does not amount to their enforcement. Our current workplace laws around wages are case in point.
35. Age and ignorance of where to get help, as identified by the Audit, are a significant cause of compliance issues in Queensland.²⁰ In order for wage theft to be stamped out, this ignorance must be removed, notwithstanding the age of young workers.
36. Secondary schools and TAFEs are well placed to offer career advice. However, this advice does not include workplace and industrial concepts. Schools and other registered training organisations should be setting young people up not just for further study or vocational training, but the immediate prospect of a job.
37. A workplace rights approach to this education program would ensure:
 - an understanding of their rights at work including award wages, penalty rates, payslips, superannuation and health and safety rights;
 - a knowledge of employer or other engager obligations;
 - capacity to identify common risks and exploitation;
 - comprehension of transferable issues such as bullying and harassment; and,
 - awareness of organisations that exist to assist with workplace matters.
38. Issues of ignorance and intimidation young workers face can be dealt with in these sessions. This will ensure young people are better prepared for work, making our workplaces healthier and safer.
39. The culture of acceptance must change. 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.

²⁰ Food Precincts Act v t es Report, Fa r Work Ombudsman, Ju y 2018.

Recommendations

40. The YWH recommend a number of reforms, namely:

- (A) THAT a separate legislative instrument be introduced to deal with the complex arrangements in which wage theft can occur;
- (B) THAT the legislative instrument include ranges of offences and penalties in line with the severity of the wage theft;
- (C) THAT the Government institute an awareness campaign on youth rates and the understanding employers should have around the entitlements of young workers; and,
- (D) THAT the Government allow senior secondary schools and TAFEs to opt in to a program that educates year 11 and 12 students on their rights at work, noting non-government schools and registered training organisations can also opt in.

Appendix

(A) Fair Work Ombudsman Pay Slip Template

Date of payment: < insert date>
 Pay per od: < insert date> to < insert date>

Emp oyer s name: < nsert>
 ABN: < nsert>
 Emp oye e s name: < nsert>
 Emp oym ent status: * < nsert status e.g. fu -t me, part-t me, casua >
 Name of <Award/Agreement>: * < nsert>
 C ass f cat on under the <Award/Agreement>: * < nsert>
 Hour y rate: \$00.00 Annua Sa ary: \$00,000
 Bank deta s: * < nsert emp oye e s bank deta s>
 Annua eave ent t ement: <xx days/hrs> as at < nsert ast date of current pay per od> *
 Persona /carer s eave ent t ement: <xx days/hrs> as at < nsert ast day of current pay per od> *
You should modify this table according to your employee’s entitlements. You can add extra lines if required.

Ent t ements	Un t	Rate	Tota
Wages for ord nary hours worked	00 hours	\$00.00	\$00.00
<Insert any eave taken dur ng the pay per od>	00 hours*	\$00.00*	\$00.00
TOTAL ORDINARY HOURS = <xx> hours <i>any leave taken should also be included here.</i>			
<Insert name of ent t ement >	00 hours*	\$00.00*	\$00.00
<Insert name of ent t ement>	00 hours*	\$00.00*	\$00.00
Gross payment			\$00.00

Entitlements can include loadings, penalty rates, shiftwork allowances, overtime, allowances, incentive based payments, termination entitlements and any other separately identifiable amount

Deduct ons	
Taxat on	\$00.00-
<Insert any other deduct ons> <i>Each deduction needs to be listed separately. You can add extra lines to this table if required.</i>	\$00.00-
Tota deduct ons	\$00.00-
Net payment	\$00.00

Employer superannuation contribution – <Insert superannuation contribution>	
<Insert account/fund name (or name and number of fund)>	
Contribution	\$00.00

Note: Pay slips must be issued to employees within one working day of the day they are paid.

**The Fair Work Ombudsman acknowledges that the inclusion of information marked with an asterisk (*) is not a requirement under the Fair Work Regulations 2009, effective 1 July 2009. This template is provided as a best practice model.*

(B) Case study: Molly (21) Hospitality worker

In January 2015, I commenced casual employment at the [REDACTED] Sushi Train Restaurant, t/as [REDACTED] Sushi Pty Ltd ATF ([REDACTED]). At the beginning of my employment I was 17, just one month off turning 18. I began employment at the Restaurant as a second casual job to support myself as a first year University student.

Upon commencing employment, I was asked to provide my tax file number and bank account details but no other documents such as an employment contract were provided. I was informed by Management after I had commenced work that I should be aware the work did not pay well, I didn't realise at the time however, this meant I would be underpaid.

For the entirety of my employment, despite my 18th birthday, I was paid a flat rate of \$11.81 an hour. This rate was paid irrespective of weekends or late hours of work between 7pm and 9pm. Most shifts were scheduled from opening at 9am to close at 9pm, with a two-hour break in the middle of the day. When I worked less than 10 hours however, we would often not be allowed to take a rest or tea break. Rosters were not provided in advance or distributed amongst staff electronically, rosters were usually drafted on an A4 piece of paper at the back of house for staff to check during working hours. Moreover, rostering would change regularly, often via a text message from management with no notice, either cancelling my shift the following day or pressuring me to come in the same day at late notice.

After describing the duties, I undertook in my employment, the fair work ombudsman was confident I would have been considered a class 2, within the period of my employment (January 2015 – 2015). As a class 2 under the award the minimum wage for a casual at 18 was \$15.76 an hour. On Saturdays with penalty rates this becomes \$18.92 an hour and on Sunday \$22.07. My parents were concerned at the time I was being underpaid, but I also had my suspicions as I had been working in retail for more than two years at the time and had become accustomed to my other job's workplace conditions.

It was difficult to discuss issues like rates of pay with my employer at the time as I observed the culture of many staff at the restaurant was to work unpaid overtime and go above and beyond what was required of us. All of the staff at the time except myself were Japanese on temporary work visas, as was Management who were appointed by the Japanese owners.

I did often wonder during the course of my employment whether the other employees were paid less than myself despite being adults, because they were more susceptible to exploitation because they were less familiar with Australia's Industrial relations laws and here on a temporary work visa. Management often spoke to staff including myself in Japanese, which I had a basic understanding of at the time, to harass and order staff around in front of customers. The tone of Management's interactions with staff both in English and Japanese was often rude and disciplinary. I was often criticised by one manager in Japanese and told to try harder which gave me the impression at that age I could be paid lower than the minimum wage for poor performance. My payslips (*Appendix C*) demonstrate I was not informed of my classification and award at the time of my employment, nor was superannuation listed.

(E) Case study: Siva (25) Food manufacturing worker

I began working for my company in July 2016. It was only in August 2017 that I found out something was really wrong with how I was being paid. The National Union of Workers came out to my worksite and began showing us the award rates and entitlements for food manufacturing workers. I was shocked! I had been underpaid more than \$1.50/hour. More than 400 people work for my company and it was clear that most of us had 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 pay rates and shift loadings for working late in the night or early in the morning too. Some of us had worked 22 hour long shifts with no breaks! We all just thought this was normal.

The NUW was able to educate us on our entitlements as food manufacturing workers but we knew the only way that we could start to be paid what we were entitled to was for myself and my colleagues to stick together. Just to discover how much I had been underpaid was a fight that I could not have won on my own. I did not have the time to go through all my payslips and timesheets from the past year to calculate how much my employer owed me. And I wasn't in the financial position to hire an accountant or lawyer to do it for me. Neither were my colleagues. But as a union member I had the support and expertise to get this done! 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, what we did was, a large group of us, with the assistance of the NUW, all handed in pay audit forms that authorised the union to review all of our timesheets and payslips.

My employer failed to provide our payslips to the union in the legal timeframe. The NUW had to take them to the Fair Work Commission. Once the union was finally able to access our payslips they calculate how much I have been underpaid during my time working for my company. I had been underpaid almost \$18,000 and I lived pay cheque to pay cheque. I had to take out loans to live on over Christmas period and attend my grandmother's funeral. But the struggle to actually get my employer to back pay my colleagues and I continues on. There are no laws around how long a company has to repay their workers the money they're owed. So, we have to keep fighting to receive the money that belongs to us. Prior to the NUW coming out to my workplace I knew very little about my entitlements at work and never thought something like this would happen to me.

(F) Case study: Kate (18) Hospitality worker

The wage theft mentioned occurred when a different member of staff did the pay that week. As I don't get pay slips, I only realized it was missing a couple of weeks after. When I contacted my boss asking him to look into it he said he would but never got back to me - despite me following up. My main issue was the total lack of pay slips that meant I was wasn't empowered to question wage changes. For example, after around a year of working there, my weekend rate was cut from \$23/hr to \$16.62/hr (this was before penalty rate cuts) with no mention to/conversation with me. I had no proof that my wage use to be \$23/hr (I only know this because it's what others also said they got paid and from what I worked out with amount paid/amount worked). I was nervous to ask in case my boss claimed he'd accidentally been over paying me (as I didn't have a pay slip to prove in writing that was my rate) and wanted to claim that money back.

