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Senate Standing Committees on Economics
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Dear Secretariat

The Victorian Government welcomes the opportunity to provide input to the Senate Inquiry into the causes, extent and effects of unlawful non-payment or underpayment of employees' remuneration by employers and measures that can be taken to address the issue.

Wage theft is a serious issue and more must be done to address it

A number of recent high-profile cases, data from audits conducted by the Fair Work Ombudsman (FWO) and the findings of the Migrant Workers' Taskforce confirm the deliberate, widespread and prevalent practice of the underpayment of worker entitlements, often referred to as wage theft. While it affects employees across a range of industries and demographics, some workers are particularly vulnerable to wage theft, such as workers who are low skilled, students or migrants.

In Victoria, it is estimated that 79 per cent of employers in the hospitality industry did not comply with the national award wage system from 2013 to 2016. Nationwide it is estimated that one in two hospitality workers are being underpaid, with similar figures reported for the retail, beauty and fast food sectors. However, as can be seen from numerous media reports and instances of employers now 'self-reporting', wage theft is endemic across workplaces in all industries. Wage underpayment is often accompanied by employers failing to keep or falsifying records to avoid detection.

Wage theft can take many forms including, but not limited to, deliberately:

- underpaying wages, penalty rates, superannuation, overtime, commissions and/or allowances;
- failing to assign entitlements such as sick, annual or carers leave;
- requiring workers to repay money earned or making unauthorised deductions from employee pay;
- excessive and unreasonable unpaid trial periods or internships; and
- misclassification of employees under Awards or as contractors (referred to as 'sham contracting').

One of the biggest impacts of wage theft is financial insecurity for victims and their families. This can make it difficult to meet the cost of housing, utilities, groceries and other essentials, as well as to financially plan for the future.

Withholding super contributions also creates an impact into the future for employees, depriving them of not only their contributions but also the compound interest and return on investments that the contributions would accrue, providing less financial security in retirement.

The impact of wage theft extends beyond those directly affected. It leads to an uneven playing field where compliant businesses struggle to compete with those who are not paying lawful entitlements. The McKell Institute Victoria's *'Falling Wages, Stalling Growth'* report highlights how wage theft by some businesses also undermines the ability of their competitors to provide pay rises, keeping wages stagnant in many industries.

The Victorian Government is committed to stamping out wage theft

Given the significant direct and indirect impacts of wage theft on victims and the economy more broadly, the Victorian Government is taking action to hold employers who deliberately withhold entitlements to account and assist employees to recover entitlements owed to them. In May 2018, the Victorian Government committed to introducing criminal wage theft offences and simplifying the process for workers to recover unpaid entitlements.

Enactment of new criminal offences

The Victorian Government is committed to introducing a new offence targeting employers who deliberately withhold employee entitlements. We are also introducing criminal offences that target employers who deliberately fail to keep, or falsify, employee entitlement records as a way to avoid paying employee entitlements. These new offences are intended to capture deliberate underpayments, and not those employers who make mistakes or inadvertently underpay employees. Work is underway to progress the Bill which will introduce these offences.

Wage theft offenders will be liable for up to 10 years' imprisonment or for fines of up to \$198,264 for individuals or \$991,320 for companies. To ensure employers do not benefit by attempting to hide wage theft through a failure to keep, or falsify, records, the record keeping offences will attract the same penalty. The penalty is tough but reflects the seriousness of the crime and will protect workers by deterring those employers who may be tempted to do the wrong thing.

Investigation and prosecution of the new offences

The new wage theft offences will be investigated and prosecuted by the Victorian Wage Inspectorate. The Wage Inspectorate will be provided with strong investigative and enforcement powers as well as specialised industrial relations knowledge to ensure that the new offences are effective.

We are working to ensure the scheme put in place to combat wage theft is robust, the scope is appropriate, and the penalties act as a significant deterrent, reflecting the seriousness with which the Victorian Government views this conduct.

Recovery of unpaid entitlements

To make it easier for employees to recover their unpaid entitlements, we are also improving the claims process in the Magistrates' Court of Victoria by making it faster, cheaper and easier for workers to get the money they are owed from employers.

The Victorian Government supports improving the Fair Work System

We note that in addition to this Senate Inquiry, the Commonwealth Government is also considering improvements to the Fair Work system which are aimed at protecting employees' entitlements. While the FWO has powers to investigate and enforce civil penalties under the *Fair Work Act 2009*, this does not always result in employers being held sufficiently accountable or deter further unlawful conduct. In 2018, the FWO reported that almost 1 in 4 employers continue to engage in underpayment after being audited.

In light of this, Victoria believes it is critical to strengthen enforcement of workplace laws by increasing the resourcing capabilities of compliance and enforcement agencies such as the FWO and Australian Taxation Office, in addition to providing criminal sanctions for serious cases of deliberate wage theft.

Changes to the existing legal framework which assist employees to recover unpaid entitlements and introduce appropriately targeted criminal offences for deliberate and systemic wage theft are long overdue. Wage theft has been described as endemic across Australia and the current legislative scheme appears to provide inadequate deterrence for employers who continue to do the wrong thing. However, any legislative reform needs to be suitably crafted and supported to successfully respond to the behaviours and conduct associated with wage theft. Effective enforcement mechanisms and proper implementation of any proposed wage theft reforms will be critical to ensuring they deter a culture of wage theft and adequately protect workers.

The Victorian Government would also like to see broad consultation and cooperation on this issue, including the establishment of a working group that includes all States and Territories to develop a national consistent approach to wage theft, reflective of the objectives contained in the Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector.

Effectively combating wage theft is a challenge for all governments, and we must do more to hold employers to account and ensure employees and compliant businesses are protected.

Yours sincerely



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