



**Working Women's
Centre Vic.**

Submission to Inquiry

**Wage theft framework under the Fair Work Act 2009, and the
operation of subsection 327A(1).**

5 May 2026

Acknowledgement of Country

Working Women's Centre Victoria works would like to acknowledge the First Peoples of the lands across Victoria that we work on. We acknowledge their role as custodians of Country and pay our respects to their Elders, lores, customs and creation spirits.

We acknowledge the way Australia's colonial legal and justice system continues to disproportionately harm Aboriginal and Torres Strait Islander people. We commit to working in allyship with Aboriginal and Torres Strait organisations and communities to dismantle systems of marginalisation and discrimination.

Sovereignty was never ceded. This land always was, always will be, Aboriginal land.

About Working Women's Centre Victoria

Working Women's Centre Victoria (WWC Vic) is a not-for-profit partnership providing holistic, trauma-informed support to women and non-binary people experiencing workplace sexual harassment and other workplace issues.

The partnership brings together four community legal centres with expertise in employment, discrimination and sexual harassment law, as well as training, capacity building and law reform advocacy: South-East Monash Legal Service (SMLS), Women's Legal Service Victoria (Women's Legal), Westjustice, and Northern Community Legal Centre (Northern CLC).

Led by SMLS, the partnership works collaboratively to deliver legal assistance, training and advocacy across Victoria, with a shared commitment to social justice and improving outcomes for working women and non-binary people.

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Our Services

At the WWC Vic, we offer a range of free legal services to support working women and non-binary people in Victoria:

- **Advice and Information:** We provide legal advice and information about workplace issues like sexual harassment and discrimination.
- **Representation and Advocacy:** We support and represent women and non-binary people in mediations, tribunals, and courts if they have faced workplace issues, such as sexual harassment.
- **Education and Training:** We provide training for workers, the community, and businesses to raise awareness of employees' rights and create safe, supportive workplaces.
- **Sexual Harassment Prevention and Law Reform:** We collaborate with our peak body, Working Women's Centre Australia, and other organisations across Australia to promote gender equality and eliminate gendered workplace violence. We make submissions to inquiries and contribute to driving change in workplace laws and systems in Victoria and Australia.

Our specialist lawyers support women and non-binary people with a variety of workplace-related matters including:

- Sexual harassment
- Discrimination
- Wage theft
- Unfair dismissal
- Sham contracting
- Workplace entitlements

- Parental leave
- Accessing family violence leave at work
- Workplace bullying

Our Commitment

The WWC Vic provides holistic, trauma-informed services that are accessible to working women and non-binary individuals, particularly those from culturally and racially marginalised (CARM) backgrounds, Aboriginal and Torres Strait Islander communities, non-binary, trans and intersex people, young women, women with disabilities, and those in rural or remote locations. Our services are place-based with outreach activities where needed, promoting accessibility across Victoria.

Additionally, we work collaboratively with other services and organisations to create effective referral pathways, ensuring comprehensive support for our clients. By partnering with the national body and other working women's centres, we coordinate service delivery and promote gender equality and the prevention of sexual harassment beyond Victoria.

All women can access advice and information, and we aim to ensure we are accessible to women and non-binary people who are at most significant risk of discrimination and harm in the workplace. This includes people experiencing family violence, people with a disability, migrant workers, international students, casual workers, trans and gender diverse people and young workers.

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Executive Summary

WWC Vic welcomes the opportunity to contribute to this Inquiry and provide evidence drawn from our legal service delivery, integrated support and law reform advocacy on the ongoing and systemic nature of wage theft experienced by the workers we support.

Wage theft remains a widespread and entrenched form of workplace exploitation, often normalised within certain industries and embedded in workplace practices. Workers frequently experience ongoing patterns of underpayment rather than isolated breaches, particularly in insecure and low-paid sectors characterised by casual employment, high workforce turnover and limited oversight.

Wage theft has a clear gendered and intersectional impact. Women and non-binary workers are disproportionately affected due to their concentration in low-paid, insecure and award-reliant roles, particularly in feminised industries such as retail, hospitality, healthcare and community services. Risk is further compounded for migrant workers, where visa insecurity, language barriers and fear of immigration consequences can prevent workers from reporting underpayment or accessing enforcement pathways, allowing wage theft to occur with limited visibility and low risk of consequence.

The introduction of criminal wage theft provisions under the *Fair Work Act 2009* (Cth), including subsection 327A(1), represents a significant shift in the legal and regulatory approach. While it appropriately recognises the seriousness of deliberate underpayment and has contributed to increased awareness and improved compliance in some parts of the labour market, it will not operate as an effective deterrent in isolation. The high evidentiary threshold, reliance on worker reporting and limited enforcement capacity mean that most wage theft will continue to go undetected and unprosecuted – particularly for migrant workers who may be unable to safely come forward.

A key limitation of the current framework is the absence of an accessible and effective wage recovery pathway. Workers must navigate complex, formal and often costly processes to recover unpaid wages, which are inaccessible to many. As a result, wage theft continues to operate as a low-risk, high-reward practice. This is compounded by the continued reliance on individual workers to identify and calculate underpayment and seek enforcement individually. While the Fair Work Ombudsman (FWO) provides tools and guidance, the burden of substantiating claims remains largely with workers, limiting access to justice and undermining the effectiveness of the framework in practice.

Addressing wage theft in all its forms requires a shift from reactive, complaints-based enforcement toward a proactive, accessible and prevention-focused system that addresses the structural drivers of non-compliance. As these reforms are implemented, it is important to note that an increase in reporting should be expected and understood as a positive indicator of improved system accessibility and effectiveness, rather than increased non-compliance.

Eight Key Recommendations

WWC Vic recommends the following reforms to strengthen the effectiveness of the wage theft framework:

1. **Strengthen enforcement and deterrence** through increased resourcing and proactive, regulator-led investigations in high-risk industries
2. **Establish an accessible wage recovery pathway** to enable timely, low-cost recovery of unpaid wages
3. **Strengthen regulator support for wage assessment and underpayment calculations**, including increased resourcing for the Fair Work Ombudsman to assist workers to identify, verify and quantify entitlements
4. **Strengthen employment information and record-keeping** obligations to improve transparency and compliance
5. **Improve data collection and transparency** on wage theft complaints, enforcement outcomes and industry trends
6. **Invest in prevention and early intervention**, including education and support through community-based organisations
7. **Address gendered and structural inequality** through targeted protections for workers in insecure and high-

risk employment

8. **Improve safe reporting and access** to justice for migrant workers, including strengthened protections and accessible support systems

Further detail on each recommendation is provided below.

Overview of Wage Theft in Practice and Gendered Impacts

Wage theft is not an isolated or rare occurrence. It is systemic, often normalised within certain industries, and embedded in workplace practices. Through our legal service delivery, WWC Vic regularly observes underpayment of base wages and penalty rates, unpaid overtime, misclassification under awards, and non-payment of superannuation. For many workers, wage theft is not a one-off breach but an ongoing pattern of exploitation. While the review focuses on the effectiveness of criminal wage theft offences under the Fair Work Act 2009 (Cth), WWC Vic's casework demonstrates that much of this conduct occurs across a broader spectrum of non-compliance. Many instances may not meet the threshold for criminal liability but nonetheless result in significant and ongoing harm to workers, highlighting the limits of a purely criminal enforcement approach.

These practices are most prevalent in workplaces characterised by insecure or casual employment, high workforce turnover, limited union presence, and business models that rely on low-paid labour and weak oversight. Informal or undocumented work arrangements can further reduce transparency and accountability, creating conditions in which non-compliance can persist.

Wage theft disproportionately affects women and non-binary workers due to structural inequalities in the labour market—not because of any individual vulnerability or action. These workers are more likely to be concentrated in low-paid, insecure and award-reliant roles where bargaining power is limited and exposure to underpayment is higher. They are also more likely to work in fragmented, casual or precarious arrangements with limited oversight, increasing the risk of exploitation.

Intersectional disadvantage reflects how systems and structures operate, rather than deficits in individuals. Migrant workers, First Nations workers, young workers, LGBTQIA+ workers and workers with disability often face additional systemic barriers to understanding and enforcing their rights, including language access gaps, visa settings, discrimination and limited access to safe and trusted legal support. These factors shape the conditions in which wage theft occurs and persists, and must be addressed through structural, not individualised, responses.

Caring responsibilities may also increase likelihood of experiencing wage theft. Women who reduce their hours due to pregnancy, parental leave or ongoing care are at risk of experiencing misclassification, incorrect pay rates and underpayment over extended periods, contributing to long-term economic insecurity. In many sectors, wage theft is normalised and treated as an expected part of the job, rather than a breach of legal obligations, allowing exploitative practices to persist, largely unchecked.

For migrant workers, wage theft is often structurally embedded or inbuilt into employers' business model. Employers may exploit perceived or actual visa dependency, limited knowledge of rights and fear of job loss or immigration consequences to suppress complaints. This creates conditions in which underpayment can persist over extended periods without challenge, even where it is known to workers.

Case study: Helping Myaing recover her stolen wages

Myaing came to Australia from Burma and has limited English speaking and writing skills. Myaing found a job at a manufacturing company where she worked in a pick-packing role as a permanent part-time employee, working four days per week.*

After several years of employment, the business experienced a downturn of trade and asked all staff to stop working. Myaing was not paid for her final weeks of work. Several months later, her employer called Myaing and asked her to return to work. Myaing refused to resume work until her outstanding entitlements were paid.

Myaing attended the WWC Vic to receive advice on how to pursue those final weeks of unpaid wages from her employer. After receiving legal advice, she became aware that she had been underpaid her hourly rate for the entire duration of her employment. She also learned that she had not been correctly paid shift allowances, penalty rates or overtime rates.

WWC Vic assisted Myaing to calculate her underpayments and determined that she had approximately \$50,000 of wages stolen from her by her employer over the course of her employment.

**Names and some other details have been changed to protect privacy*

Structural Barriers to Wage Recovery

Australia's wage recovery system places the burden of enforcement on individual workers. In practice, workers are required to:

- identify underpayment
- calculate complex entitlements
- pursue claims through formal legal processes

This assumes a level of legal knowledge, time and financial capacity that many workers do not have.

The primary pathway for recovery – small claims proceedings through the courts – is often slow, complex and costly. These processes require workers to navigate formal legal rules, gather and present evidence, and comply with procedural requirements. In many cases, workers must obtain legal assistance to effectively pursue a claim, which can exceed the value of the wages owed. The system is also fragmented, requiring workers to engage with multiple bodies, each with different processes and expectations, adding to confusion and delay.

As a result, many workers do not pursue recovery at all. For those who do, the process can be lengthy, adversarial and uncertain. Despite the widespread nature of underpayments, only a small proportion of workers initiate formal claims, highlighting a significant gap between the scale of wage theft and access to justice. This gap is particularly pronounced for workers facing additional barriers, including language barriers, visa insecurity, discrimination and caring responsibilities.

Even where workers successfully obtain orders, enforcement mechanisms are weak and recovery of unpaid wages is not guaranteed. Employers may delay, avoid or fail to comply with orders, requiring further legal action by employees, at their own cost, to enforce payment. This creates a system in which wage theft is unlawful but often goes unremedied in practice, undermining both deterrence and confidence in workplace protections. Over time, this contributes to a regulatory environment where non-compliance can be perceived as low risk, particularly in sectors characterised by insecure work and limited oversight.

The evolving role of the Fair Work Ombudsman under the wage theft framework highlights the need for greater clarity in how the system operates in practice. While the FWO plays a critical role in investigation and enforcement, the current model continues to rely heavily on individual workers to identify, calculate and pursue underpayment. This limits the practical effectiveness of the framework, particularly for workers facing barriers to reporting and enforcement.

Strengthening the role of the Fair Work Ombudsman in wage assessment, early intervention and referral into accessible recovery pathways would improve system effectiveness and reduce reliance on individual workers. This approach clarifies the role of the FWO as a regulator responsible for investigation and enforcement, while recognising the need for an accessible forum to resolve disputes and enable recovery of unpaid wages. Consideration should be given to whether this function could be performed within the Fair Work Commission, or another appropriate tribunal-style forum, to provide a clearer and more coordinated pathway from identification of underpayment through to recovery.

Impact of the amended Wage Theft Framework (including s327A(1))

Positive developments

- The introduction of criminal wage theft provisions, including subsection 327A(1), represents an important shift in how wage theft is understood and addressed within Australia's workplace relations framework. It reflects a clear recognition of harm, reframing wage theft as serious misconduct rather than administrative non-compliance, and acknowledging the significant financial and psychological impacts on workers.
- The introduction of criminal penalties may have increased awareness among some employers and prompted greater attention to compliance with wage and entitlement obligations, particularly in higher-risk sectors. This shift signals that deliberate underpayment is not a minor regulatory issue, but conduct that warrants serious consequences.
 - Lawyers at WWC Vic have observed that, with the introduction of criminal wage theft offences, referencing potential criminal consequences in a Letter of Demand can strengthen its impact and signal the seriousness of non-compliance. However, WWC Vic notes that this effect may diminish over time as employers become more familiar with the threshold for criminal prosecution and the relatively low likelihood of enforcement in practice.
- Importantly, while the reform reflects broader community expectations that serious and deliberate wage theft should be treated as a serious offence, its framing and implementation require careful consideration. There is a risk that criminalisation may contribute to overreach in enforcement, particularly if it disproportionately impacts small businesses rather than large corporations. In practice, this may include migrant-owned small businesses, who are often also clients of community legal centres in other contexts.
 - While the introduction of criminal offences establishes an important normative standard around fairness and accountability in the workplace, its effectiveness will depend on how it is applied in practice.

Limited impact on incidence

- Despite these positive developments, the absence of prosecutions or reported claims since criminalisation should not be taken as evidence that wage theft has decreased. Criminalisation alone is not sufficient to address the systemic nature of wage theft. Without complementary structural reforms to improve reporting, enforcement and accessible recovery pathways, wage theft is likely to persist.

- **Low likelihood of enforcement** remains a key issue. Criminal prosecutions are rare, and many matters are not reported, do not progress, or are resolved informally, limiting the deterrent effect of the framework. The system continues to rely heavily on individual workers to identify underpayment, understand complex entitlements, and navigate complaint processes – an unrealistic expectation for many, particularly those in insecure or vulnerable employment.¹
- **The absence of an accessible wage recovery pathway** further undermines effectiveness. Workers must navigate complex, court-based processes that are often slow and costly, leading many to abandon claims or accept reduced settlements. Even where claims succeed, recovery is not guaranteed.
- **Power imbalances** compound these barriers. Fear of job loss, visa insecurity and employer retaliation (including job loss) significantly reduce reporting, allowing wage theft to persist largely undetected. Power imbalances compound these barriers. Fear of job loss, visa insecurity and employer retaliation significantly reduce reporting, allowing wage theft to persist largely undetected.
 - WWC Vic casework demonstrates that many workers choose not to pursue recovery at all due to the risks and burden associated with engaging directly with their employer as part of the process. This is particularly acute for workers in insecure or migrant employment, where the perceived consequences of taking action can outweigh the benefit of recovering unpaid wages.

Case study: Amina experience surviving family violence and navigating wage theft

Amina came to Australia from Lebanon and has limited English speaking and writing skills. Amina moved to Australia after marrying her Australian husband, Tom, and applying for a partner visa. Amina lived and worked for Tom in Australia. Tom became very violent and controlling, monitoring her movements, verbally and physically abusing her.*

Amina worked in Tom's business and did not receive wages. Tom told Amina that he was holding her wages to pay for their shared housing. The family violence escalated and police attended an incident, then applying for a Family Violence Intervention Order to protect her.

Amina attended Northern Community Legal Centre and received legal advice and support in relation to the FVIO application as well as her visa status. Northern CLC supported Amina to separate her visa status from Tom and receive the protection of a FVIO. Northern CLC referred Amina to the specialist employment lawyers at Northern CLC, as part of WWC Vic.

Amina received legal advice in relation to her unpaid wages and avenues for financial compensation. Amina had worked for a number of years without receiving wages, often working 7 days in a row, 12-hour shifts. Amina was reluctant to engage in a legal process to assert her legal rights and access unpaid wages, as she did not want any further contact with Tom. She instead chose to apply for support through the Victims of Crime Financial Assistance Scheme.

**Names and some other details have been changed to protect privacy*

¹ Migrant Workers' Taskforce, *Report of the Migrant Workers' Taskforce* (Report, Attorney-General's Department, March 2019).

WWC Vic's Wage Theft Reform Priorities

To strengthen the effectiveness of the wage theft framework under the Fair Work Act 2009 (Cth), including subsection 327A(1), WWC Vic recommends:

1. Recommendation 1: Strengthen enforcement and deterrence

- a. Increase resourcing for the Fair Work Ombudsman to undertake proactive investigations and enforcement, with a focus on high-risk industries. Expand regulator-initiated enforcement to reduce reliance on individual worker complaints and prioritise systemic and deliberate underpayment.

Why this change is needed:

- b. While some proactive enforcement occurs, it is limited in scale and insufficient to address the systemic nature of wage theft. In practice, enforcement remains largely complaint-driven, meaning many instances of underpayment, particularly in high-risk industries and among migrant workers are never detected or investigated. Without sustained, targeted and proactive enforcement, non-compliance can persist with low risk and limited deterrence.
- c. Increased reporting and identification of wage theft should be expected as enforcement improves and barriers to reporting are reduced. This reflects a more effective and accessible system, rather than an increase in non-compliance. Higher reporting rates indicate that workers are better able to identify, report and act on underpayment, and should be understood as a key measure of success in strengthening the framework.

2. Recommendation 2: Establish an accessible wage recovery pathway

- a. Establish a dedicated, low-cost wage recovery tribunal to enable workers to recover unpaid wages quickly and without the need for formal court proceedings. This should include:
 - i. A simplified, tribunal-style process that is accessible without legal representation
 - ii. The power to issue binding and enforceable repayment orders
 - iii. Clear and coordinated referral pathways between regulators, including from the Fair Work Ombudsman into the Fair Work Commission
 - iv. Fee-free or low-cost access to the jurisdiction, including waiver of filing fees for workers
 - v. Simple and effective enforcement of decisions, so that workers can recover unpaid wages without needing to start further legal proceedings
- b. This reform would shift the burden of enforcement away from individual workers and provide a faster, fairer and more accessible mechanism for recovering unpaid wages.

Why this change is needed:

- c. An accessible wage recovery pathway should enable workers to pursue unpaid wages in a way that is timely, low-cost and procedurally simple, including the ability to initiate a claim without legal representation, access clear guidance and support, and have matters resolved through informal, tribunal-style processes rather than formal court proceedings. It should provide a single, streamlined pathway from identification of underpayment through to determination and recovery, without requiring workers to navigate multiple systems or forums. Critically, accessibility must extend to enforcement, ensuring that outcomes are directly enforceable without further legal action, so that workers can move from legal entitlement to practical recovery.

3. Recommendation 3: Strengthen regulator support for wage assessment

- a. Increase resourcing for the Fair Work Ombudsman to provide direct, accessible support to workers to identify and calculate underpayment. This should include:
 - i. assistance to verify pay rates, classifications and entitlements
 - ii. support to calculate underpayment, particularly in complex or long-running matters
 - iii. proactive engagement in high-risk industries to support early identification of issues

4. Recommendation 4: Strengthen employment information and record-keeping

- a. Require employers, at commencement of employment, to provide a written statement specifying the applicable industrial instrument (including award name), classification, employment status, ordinary hours and rate of pay.

Why this change is needed:

- b. Workers often lack clear and accurate information about their pay, classification and entitlements, making it difficult to identify when underpayment has occurred. Inadequate or inaccessible records also limit the ability of regulators to investigate non-compliance. Strengthening information and record-keeping obligations is critical to improving transparency, enabling early detection of wage theft, and supporting enforcement.

5. Recommendation 5: Improve data collection and transparency

- a. Collect and publish data on wage theft complaints, enforcement outcomes and industry trends to support targeted compliance and enforcement.

Why this change is needed

- b. There is limited publicly available data on the scale, nature and distribution of wage theft. This reduces the ability of regulators and policymakers to identify systemic issues, target high-risk areas and evaluate the effectiveness of enforcement. Improved data collection and transparency are essential to support evidence-based policy and more effective regulatory responses.

6. Recommendation 6: Support prevention and early intervention

- a. Fund targeted education and guidance for employers and workers, particularly in high-risk industries, and resource community-based organisations to support early intervention and access to justice.

Why this change is needed

- b. Many instances of wage theft arise from a combination of low awareness, complex obligations and inadequate systems, particularly in smaller or high-risk workplaces. At the same time, workers often require trusted, accessible support to understand and assert their rights. Investment in prevention and early intervention can reduce non-compliance, support timely resolution of issues, and reduce reliance on formal enforcement mechanisms.

7. Recommendation 7: Address gendered and structural inequality

- a. Embed gendered and intersectional analysis in enforcement and policy responses, and strengthen protections for workers in insecure and casual and labour hire arrangements.
- b. Recognising that wage theft disproportionately affects women and workers disadvantaged by the structure of the labour market, we recommend that the Fair Work Ombudsman make an explicit, ongoing commitment to prioritise resources, enforcement activity and strategic interventions toward these cohorts.

Why this change is needed

- c. Wage theft disproportionately affects women and non-binary workers due to their concentration in insecure, low-paid and award-reliant roles. These workers also face additional barriers to reporting and enforcement, including power imbalances, caring responsibilities and discrimination. Without targeted measures, existing inequalities will continue to shape who is most exposed to wage theft and least able to recover unpaid wages.

8. Recommendation 8: Improve safe reporting and access to justice for migrant workers

- a. Introduce targeted measures to ensure migrant workers can safely report wage theft, including:
 - i. establishing a clear legislative separation (firewall) between workplace enforcement and immigration compliance
 - ii. strengthening protections against retaliation and adverse action

- iii. expanding access to trusted third-party reporting through community organisations including unions, and legal services
- iv. providing culturally appropriate and multilingual information and support
- v. Expanding access to the Workplace Justice Visa and Strengthening Reporting Protections Pilot, including by broadening the list of Accredited Third Party certifiers to include community legal centres, in addition to unions

Why this change is needed:

- b. For migrant workers, the primary barrier is not whether wage theft is unlawful, but whether it is safe to challenge it.

Conclusion

Wage theft is a systemic issue that continues to cause significant financial and psychological harm, particularly for women and workers experiencing structural disadvantage. While the introduction of criminal offences under the *Fair Work Act 2009 (Cth)* is an important step, the current framework is not yet operating as an effective deterrent in practice.

Without an accessible and enforceable wage recovery pathway, wage theft will continue to operate with low risk and limited consequence, regardless of criminalisation.

Addressing wage theft requires a shift from reactive, complaints-based enforcement toward a proactive, accessible and prevention-focused system that addresses the structural drivers of non-compliance. Strengthened enforcement, improved access to recovery, and a clear focus on gendered and intersectional impacts will be critical to achieving meaningful reform.

As these reforms are implemented, an increase in reporting should be expected and understood as a positive indicator of improved system accessibility and effectiveness, rather than increased non-compliance.

WWC Vic welcomes continued engagement to support the development of a more effective, accessible and equitable wage theft framework.