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SDA SUBMISSION TO THE EDUCATION AND EMPLOYMENT REFERENCES COMMITTEE

"The extent to which the wage theft framework under the Fair Work Act 2009, and the operation of subsection 327A(1), has led to a decrease in the incidence of wage theft in Australia, and any other related matter."

Date Submitted: 23 April 2026

Submitted by: Gerard Dwyer
National Secretary-Treasurer

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Executive Summary

1. This submission is made by the Shop, Distributive and Allied Employees' Association (SDA) to the Senate Education and Employment References Committee inquiry into wage theft.

2. The SDA submits that wage theft, which includes the deliberate underpayment of wages, unpaid overtime, penalty rates and superannuation, unpaid trials and the falsification of time and wages records, continues to occur on a large and entrenched scale and that the criminalisation of wage theft has not yet led to a material reduction in underpayment, particularly in sectors characterised by insecure work, franchising, labour hire and low union density.[1]

3. Young workers remain the cohort most exposed to wage theft. Recent large-scale research by the Melbourne Law School[2] demonstrates that approximately one-third of young workers are likely underpaid, one quarter are not paid compulsory superannuation, and significant proportions experience unpaid overtime, unpaid trials, and manipulation of time records. These findings are consistent with the SDA's experience representing workers in non-unionised retail and fast food operations.

4. This submission further demonstrates that reliance on a regulator-only enforcement model, carried out by the Fair Work Ombudsman (FWO), is incapable of policing wage theft at scale. The FWO's enforcement model is predominantly complaints-based, is limited by resourcing, and is structurally mismatched to the nature of modern labour markets. Furthermore, evidence shows that the workers most at risk of exploitation are the least likely to engage regulators.

5. The SDA submits that registered organisations are uniquely placed to address this enforcement gap. The removal and erosion of the rights of registered organisations to inspect time and wages records has materially weakened Australia's compliance framework. Restoring these enforcement rights, including routine "spot check" access to records, would significantly strengthen deterrence, protect compliant employers, and provide cost-effective, decentralised enforcement across the economy.

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[1] Senate Economics References Committee, *Systemic, Sustained and Shameful* (2022) – findings that wage theft remained widespread prior to criminalisation; Fair Work Ombudsman Annual Reports (post-criminalisation) showing continued recovery of hundreds of millions of dollars annually; McKell Institute, *Unfinished Business: The Ongoing Battle Against Wage Theft* (2023).

[2] Melbourne Law School *Fair Day's Work Report 2025* (Howe & Dillon).

6. The SDA further submits that non-payment of superannuation must be treated explicitly as wage theft, and that current split enforcement arrangements between the FWO and the Australian Taxation Office (ATO) have created enforcement gaps that enable large-scale non-compliance.

7. Finally, this submission supports the establishment of an accessible small claims jurisdiction, with simplified processes and explicit standing for registered organisations to act on behalf of workers. The SDA considers that the establishment of a small claims tribunal to be an essential component of an effective wage theft response.

Introduction

8. The Shop, Distributive and Allied Employees' Association ("the SDA") is Australia's largest private sector trade union, representing workers in retail, fast food, warehousing, distribution, community pharmacy, online retail and associated sectors. These industries employ a disproportionately high number of young workers, women, migrant workers, and workers engaged in casual, part-time and insecure employment.

9. This submission addresses the inquiry's term of reference: whether the wage theft framework under the Fair Work Act 2009, including subsection 327A(1), has led to a decrease in the incidence of wage theft in Australia, and any other related matter. It draws on:

    - SDA National Office research and recoveries;
    - the Melbourne Law School *Fair Day's Work Report 2025* (Howe & Dillon);
    - the McKell Institute's *Unfinished Business: The Ongoing Battle Against Wage Theft* (2023);
    - Fair Work Ombudsman annual reporting;
    - Australian Taxation Office data on unpaid superannuation; and
    - findings from previous parliamentary inquiries.

10. The SDA submits that while the criminalisation of wage theft sends an important signal, this has not addressed the structural drivers of wage theft and has not materially reduced its prevalence.

The Scale and Persistence of Wage Theft

11. Wage theft remains widespread, systemic and entrenched. In its 2022 report, "*Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*" ("the 2022 Senate report"), the Senate Economics References Committee heard evidence that unlawful underpayment of wages and superannuation costs the Australian economy up to $12 billion annually, and determined that wage theft is pervasive across the Australian economy.[3]

12. Recent data confirms that this situation has not materially improved. Fair Work Ombudsman annual reports continue to record the recovery of millions of dollars in unpaid wages each year. However, these figures do not demonstrate deterrence or compliance; rather, they reflect the scale of non-compliance after detection. The magnitude and persistence of recoveries indicate that underpayment remains routine in many sectors.[4]

13. The SDA's own experience confirms this reality. Across retail and fast food, underpayments frequently arise not as isolated errors but as systemic practices: misclassification, incorrect payments, unpaid work before and after shifts, the non-provision of breaks and record falsification. Whilst the criminalisation of wage theft on 1 January 2025 does not yet appear to have changed employer behaviour, we acknowledge that these provisions, in legislative terms, are relatively new.

[3] Senate Economics References Committee, *Systemic, Sustained and Shameful* (2022).
[4] Fair Work Ombudsman Annual Reports; McKell Institute, *Unfinished Business* (2023).

Young Workers as a High-Risk Cohort

14. Young workers are consistently identified as the cohort most exposed to wage theft.

15. The most comprehensive recent evidence is provided by the Melbourne Law School *Fair Day's Work* Report in 2025, which surveyed 2,814 workers aged 15–30 across Australia and documents systemic exploitation of young people at work. Key findings include:

    - approximately **33%** of young workers were likely underpaid;
    - **25%** reported they were not paid compulsory superannuation;
    - **36%** experienced unpaid overtime;
    - **35%** reported their timesheets had been reduced by employers;
    - significant proportions reported unpaid trial work, unpaid additional duties, and payment "off the books".[5]

16. The Melbourne Law School findings demonstrate that underpayment among young workers is not incidental or confined to isolated employers. Rather, it reflects entrenched patterns of non-compliance in sectors that rely heavily on young labour. The retail and fast-food sectors feature prominently in the data, characterised by low wages, high levels of casual and precarious employment, irregular rostering, and rapid staff turnover. These conditions create environments in which non-payment of entitlements can be normalised and difficult to contest, particularly for workers with limited experience, weak bargaining power, or insecure hours.

17. Findings from the McKell Institute's report, *Unfinished Business: The Ongoing Battle Against Wage Theft* (2023) ("the McKell report") also confirm this. The McKell report identifies young workers as over-represented among victims of wage theft, particularly in consumer-facing service industries such as hospitality, retail, and fast food. The report highlights that wage theft is commonly hidden, under-reported, and systematically linked to business models that externalise risk onto low-paid and casualised workers. The report concludes documented cases of wage theft represent only a fraction of the true scale of non-compliance, as most affected workers do not pursue recovery or report their employer.

[5] Melbourne Law School, *Fair Day's Work Report 2025* (Howe & Dillon).

18. Both the Melbourne Law School and McKell Institute research show that young workers are significantly less likely than older workers to challenge underpayment or seek redress. The Melbourne Law School report found that fear of losing shifts, retaliation, or dismissal is a major deterrent, particularly for workers aged 15–19. McKell's analysis similarly points to low awareness of rights, power imbalances, and the perceived risks of speaking up as key structural barriers to enforcement. As a result, wage theft experienced by young workers is less likely to be detected, investigated, or remedied through existing complaint-driven enforcement mechanisms.

19. Together, these reports establish that young workers form a uniquely vulnerable cohort: highly exposed to wage theft, concentrated in high-risk industries, and structurally disincentivised from pursuing recovery.

20. Any effective approach to addressing wage theft must therefore recognise the particular risks faced by young workers and incorporate regulatory and enforcement responses that do not rely primarily on the raising of individual complaints or self-advocacy.

The Non-Payment of Superannuation as Wage Theft

21. The non-payment of superannuation is also a form of wage theft. Superannuation is deferred wages, and the failure to pay it denies workers their legal entitlements, the benefits of compounding returns and the weakening of their retirement security.

22. The Melbourne Law School report found that one quarter of young workers had not received compulsory superannuation. Separately, the Australian Taxation Office estimates the Superannuation Guarantee gap at approximately $6.2 billion, indicating widespread and ongoing non-compliance across all age cohorts.[6]

23. The 2022 Senate report recognised the non-payment of superannuation as an entrenched and systemic problem. The Committee noted that unpaid superannuation affects millions of workers and amounts to billions of dollars each year in lost retirement savings, disproportionately impacting young workers, casuals, migrant workers and those in insecure employment.

[6] Australian Taxation Office, *Superannuation Guarantee Gap Estimates*.

24. Current enforcement arrangements are fragmented between the Fair Work Ombudsman and the Australian Taxation Office. This split enables employers to exploit regulatory gaps, delays recovery, and weakens deterrence.[7]

25. Evidence before the Committee showed that while the ATO is responsible for administering the Superannuation Guarantee, its enforcement processes are often slow, opaque and largely removed from the workplace relations system. Workers who report unpaid superannuation frequently have no visibility over investigations, limited capacity to compel timely recovery, and no direct enforcement agency accountable to them as workers rather than taxpayers. The Committee observed that many workers do not recover unpaid superannuation until long after the employment relationship has ended, if at all.

26. At the same time, the Fair Work Ombudsman has historically had limited jurisdiction over superannuation claims. This has meant that a worker experiencing both wage underpayment and superannuation theft is often forced to navigate two separate regulatory systems, each with different processes, standards of proof and timelines. The Committee heard evidence that this division discourages reporting, fragments enforcement, and allows interrelated forms of wage theft to persist unchecked.

27. The scale of the problem underscores the inadequacy of this fragmented approach. The Committee cited long-standing estimates that unpaid superannuation totals billions of dollars annually, depriving workers of retirement income while giving non-compliant employers an unlawful cost advantage over businesses that do the right thing. The Committee also emphasised that superannuation theft undermines competitive neutrality and erodes confidence in the integrity of Australia's workplace and retirement systems.

28. Importantly, the Committee rejected the notion that superannuation non-payment is merely an administrative or taxation issue. It characterised wage and superannuation underpayment as part of the same systemic compliance failure and stressed the need for integrated enforcement mechanisms capable of addressing both together. Without such integration, employers can engage in deliberate and repeated superannuation non-payment with minimal risk of timely detection or meaningful sanction.

[7]ATO SG Gap analysis; Senate inquiries and FWO commentary on enforcement limitations; McKell Institute, *Unfinished Business* (2023).

29. If the Federal Parliament is serious about addressing entrenched and systemic superannuation theft, the enforcement of the payment of superannuation must be streamlined. This requires a stronger and more coordinated framework in which wage and superannuation compliance are treated as interconnected obligations, rather than split across institutional silos. Alignment between the FWO and ATO, as recommended by the Senate Committee, is essential to ensure that superannuation is enforced as a core workplace entitlement, with timely recovery, effective deterrence and real accountability.

30. The SDA submits that unpaid superannuation must be treated explicitly as wage theft and integrated into broader enforcement and recovery mechanisms. Failure to address this fragmentation risks entrenching superannuation theft as a low-risk form of wage theft, one whose consequences are borne silently by workers decades later. The findings of the 2022 Senate report make clear that such reform is urgent and necessary.

Limits of Regulator-Only Enforcement

31. Reliance on the Fair Work Ombudsman ("the FWO") to pursue and recover wage theft is inadequate to address the scale and structure of underpayment in Australia.

32. Whilst the FWO does conduct random inspections of employers in various sectors, its enforcement approach is largely complaints-based and reactive; it depends on individual workers identifying breaches, understanding their rights, and being willing to initiate contact with a regulator. This model is ill-suited to sectors where wage theft is systemic, embedded and normalised. The ratio of inspectors to workplaces makes routine, proactive inspection across high-risk industries, including retail, fast food, hospitality and labour hire, unfeasible.

33. Available data shows that the FWO receives many thousands of requests for help each year, far in excess of its capacity to formally investigate or litigate. Only a small proportion of matters can progress beyond advice, self-resolution or limited compliance activity. The vast majority of potential breaches therefore never reach the investigatory or enforcement stage.

34. The Fair Work Ombudsman's 2023–24 Annual Report illustrates the inherent scale limitations of a regulator-led enforcement model. In that year, the FWO reported conducting 4,035 investigations in response to requests for assistance involving workplace disputes, resulting in the recovery of $15.4 million in underpaid wages. Of that amount, $5.6 million was recovered for 3,056 workers in the fast food, restaurant and café sectors. The retail sector also accounted for 11% of all anonymous reports of suspected breaches made to the FWO.[8] By comparison, the SDA recovered more than $20 million in unpaid wages for its members in the same year. While the FWO reported total recoveries of $473 million across 2023–24, most of that figure appears to have arisen from self-reporting by large corporate employers. Whilst these recoveries are significant for the workers concerned, they must be assessed against the broader scale of wage theft across the economy.

35. Independent analysis by the McKell Institute estimates that wage theft continues to cost Australian workers billions of dollars annually on conservative assumptions. The Queensland Parliament estimated it costs their state more than $2.5 billion each year. And the ACTU, in its submission to the Senate's Economics Reference Committee, estimated that inclusive of superannuation and wages, the cost of wage theft to the Australian economy is somewhere between $6 billion and $12 billion annually.[9]

36. When compared with these estimates, recoveries achieved through FWO investigations account for only a small fraction of overall underpayments. This disparity demonstrates that complaint-driven enforcement, operating within finite regulatory resources, is incapable of addressing wage theft at scale and underscores the need for additional, decentralised enforcement mechanisms to supplement the role of the regulator.

[8] https://www.fairwork.gov.au/sites/default/files/2024-10/office-of-the-fair-work-ombudsman-annual-report-2023-24.pdf
[9] Paragraph 1.41, The Senate Economics References Committee: Systematic, sustained and shameful. Unlawful underpayment of employees' remuneration. March 2022.

37. This enforcement gap is not accidental but structural. Regulator resources will necessarily prioritise the most serious matters, leaving widespread lower-value but high-frequency underpayments unaddressed. In industries dominated by casualised, junior and insecure work, these “small” breaches accumulate into large-scale wage theft while remaining largely invisible to enforcement mechanisms.

38. The Melbourne Law School report demonstrates that approximately one-third of young workers are likely underpaid, with widespread non-payment of superannuation, overtime, breaks and recorded hours. The authors note that reported recoveries capture only “the tip of the iceberg”, given extremely low reporting rates among those most affected.

39. Measured against these estimates, FWO recoveries represent a minute fraction of total wage theft losses. The issue is therefore not whether the FWO is effective within its constraints, but whether a regulator-only model can ever meaningfully deter or remedy wage theft at scale.

40. Crucially, the workers most exposed to wage theft are also the least likely to engage regulators. The Melbourne Law School report shows that young workers, particularly those aged 15–19, are significantly less likely than older workers to contact the FWO, despite experiencing higher rates of non-compliance. Fear of losing shifts, retaliation, replacement, lack of knowledge and the normalisation of unlawful practices are consistently identified as barriers. The McKell Institute research reinforces these findings for migrant workers and those in insecure or fragmented employment arrangements.

41. Academic literature on “fissured workplaces” also demonstrates why reactive enforcement is ineffective where wage theft is embedded in franchising, subcontracting and labour hire business models.[10] In these environments, responsibility is dispersed, accountability is unclear, and the likelihood of detection is low. Even the criminalisation of wage theft cannot succeed as a deterrent if enforcement remains sporadic, remote and overwhelmingly complaint-driven.

[10] Weil, David, “The Fissured Workplace: Why work became so bad for many and what can be done to improve it.” Harvard University Press, 2014. In this text, “fissured” describes a workplace in which the primary employers has devolved employment functions through outsourcing, subcontracting, franchising and similar arrangements, so the company controlling the business is no longer the direct employer of many of the workers doing the work.

42. These realities underscore the limits of relying solely on Government funded regulators to enforce wage laws in highly fragmented labour markets. To materially increase detection, recovery and deterrence, enforcement must be supplemented by institutions that are embedded in workplaces, trusted by workers, and capable of acting proactively rather than episodically.

43. Registered organisations are uniquely positioned to perform this role. They have direct and ongoing access to workplaces, understand industry-specific patterns of non-compliance, and are able to identify systemic underpayment long before individual complaints reach a regulator, if they ever do.

44. Enhancing the role and powers of registered organisations to investigate, pursue and recover wage theft would strengthen enforcement, helping to close the gap between the scale of underpayment and the limited reach of regulator-only enforcement.

Restoring Registered Organisation Wage Enforcement ("Spot Check") Rights

45. A central weakness in the current federal enforcement framework for wage and entitlement compliance is the removal of effective, routine enforcement powers from registered organisations.

46. Historically, Australian unions played a direct and practical role in enforcing minimum labour standards through the ability to inspect time and wages records and conduct workplace checks. These rights operated as a form of decentralised, preventative enforcement, supplementing state inspection systems and ensuring that compliance did not depend solely on individual complaints or regulator intervention. Over time, however, those powers have been progressively curtailed in the federal jurisdiction.

47. Under the Fair Work Act 2009, registered organisations' right of entry powers were narrowed. Union officials can generally only access records for identified workers, must provide advance notice, and must first form a reasonable suspicion of a contravention. These restrictions stand in sharp contrast to earlier models of labour regulation in Australia, under which unions could inspect time and wages records more broadly as part of routine workplace oversight.

48. The 2022 Senate report recognised that this shift has materially weakened the overall enforcement ecosystem. The report highlighted that reliance on an under-resourced regulator and individual worker complaints has proven insufficient to address widespread and systemic underpayment, particularly in industries characterised by insecure work, high turnover and power imbalances. The Committee heard extensive evidence that underpayments frequently persist for years because workers fear reprisals, lack information, or do not remain in employment long enough to pursue claims.

49. The narrowing of union enforcement rights has meant that enforcement is now largely reactive rather than preventative. Instead of identifying problems early through routine checks, the system relies on complaints reaching the Fair Work Ombudsman, followed by slow investigations that often occur after the employment relationship has ended. This structure not only delays recovery for workers; it also weakens deterrence and allows unlawful practices to become embedded business models.

50. Evidence before multiple Senate inquiries demonstrates that union presence is strongly correlated with higher rates of compliance, better record-keeping, and earlier correction of underpayments.[11] Where unions have visibility of workplace practices, errors and non-compliance are more likely to be identified promptly, often before disputes escalate or entitlements accrue over long periods. Conversely, sectors with low union density consistently feature the highest levels of wage theft.

51. Restoring effective union rights to inspect time and wages records and conduct spot checks would address a critical enforcement gap in the federal system. In particular, restored rights would:

    - place trained and accountable officials “on the beat” across high-risk industries where underpayment is endemic;
    - enable early detection and correction of systemic errors before liabilities compound;
    - provide protection for law-abiding employers by preventing non-compliant competitors from gaining an unfair cost advantage; and
    - operate as a highly cost-effective compliance mechanism by leveraging existing institutional capacity rather than relying solely on regulator expansion.

[11] See, for example: Senate Economics References Committee, “Systemic, sustained and shameful: Unlawful underpayment of employee’s remuneration” (2022); Senate Education and Employment References Committee, “A National Disgrace: The exploitation of temporary and visa holders” (2016); Senate Economics References Committee, “The impact of non-payment of the Superannuation Guarantee” (2017).

52. Restoring these powers would make a significant addition to the enforcement toolkit available to combat wage theft and would assist in addressing the scale and complexity of the problem identified by Parliament. It is also consistent with the Senate's 2022 report, which recognised that enforcement cannot be effective if it relies exclusively on individual workers coming forward or on a single regulator attempting to police millions of workplaces. It would also complement the more proactive approach of the SDA and other registered organisations, whose existing compliance and enforcement work is more immediate and targeted than a regulator-led model can typically achieve.

53. International experience reinforces this conclusion. In jurisdictions such as Germany and New Zealand, worker organisations play a defined role in labour standards enforcement as part of coordinated, multi-actor compliance systems. These models recognise that effective enforcement depends not only on penalties after the fact, but on regular oversight, early intervention and shared responsibility for upholding minimum standards.

54. Reinstating meaningful wage inspection and spot-check rights for registered organisations would restore a proven, preventative enforcement mechanism within the federal jurisdiction. Without such reform, the enforcement framework will continue to rely on delayed, complaint-driven processes that overwhelmingly favour non-compliant employers and leave many workers without effective redress.

Criminalisation and subsection 327A(1)

55. The SDA submits that it is presently too early to make any concluded assessment of the effectiveness of the criminal wage theft provisions in the Fair Work Act, including s 327A(1), in reducing wage theft.

56. We note, however, that the offence is narrowly framed and requires proof of intentional or reckless conduct. This creates a high evidentiary threshold that is poorly suited to the most common forms of underpayment, which more often arise through systemic payroll practices, misclassification, and the manipulation or falsification of records, rather than through any express admission of intent.

57. Whether these provisions ultimately give rise to few prosecutions or many, the SDA submits that the primary measures required to address the scourge of wage theft are

the restoration of the rights of registered organisations to inspect time and wages records, and the establishment of a federal small claims jurisdiction or equivalent enforcement mechanism for the recovery of unpaid wages.

The Need for A Small Claims Jurisdiction

58. Access to justice remains one of the most significant systemic barriers to the effective recovery of unpaid wages and employment entitlements. Despite the scale and prevalence of underpayments identified in multiple parliamentary inquiries, many workers, particularly young workers, migrant workers, casuals and those in insecure employment, are effectively denied meaningful avenues to enforce their legal rights.

59. For most workers, pursuing unpaid entitlements through existing court processes is complex, intimidating, slow and costly. The requirement to navigate multiple forums, strict procedural rules, filing fees, evidentiary burdens and the risk of adverse costs orders presents a substantial deterrent. As a result, unlawful underpayment often goes unchallenged, particularly where individual claims are perceived as too small to justify the personal, financial or emotional cost of litigation. This undermines confidence in the workplace relations system and weakens the deterrent effect of our laws.

60. The Senate Economics References Committee has previously recognised these access-to-justice barriers. In its 2022 report, the Committee recommended the establishment of a dedicated small claims tribunal, ideally co-located with the Fair Work Commission, to provide “a simple, affordable, accessible, and efficient process for employees to pursue wage theft, including Superannuation Guarantee non-compliance” (Recommendation 5). The SDA strongly endorses this recommendation and reiterates the need for its implementation.

61. A dedicated small claims jurisdiction, designed specifically to deal with wage theft and employment entitlement matters, would materially improve outcomes for workers by reducing procedural complexity and cost, and by resolving disputes more quickly. Such a forum would be particularly critical for low-paid and young workers, for whom even modest underpayments can have serious financial consequences, but who are least able to navigate or afford conventional court proceedings.[12]

62. To be effective, a small claims jurisdiction should include the following features:

    a. Simplified and informal procedures that prioritise substance over form and reduce legal barriers;

    b. Expanded jurisdiction to deal with wage, entitlements and superannuation claims;

    c. Low filing fees, reduced formality and streamlined evidentiary requirements;

    d. No cost jurisdiction, and a claim threshold below which legal representation could be objected to;[13]

    e. Access to remediation and penalties;

    f. Timely resolution, with clear timelines to prevent delay undermining recovery or discouraging claimants; and

    g. Explicit standing for registered organisations to initiate and run proceedings on behalf of workers on an aggregated basis.

63. Providing unions with clear standing to act for workers is particularly important in overcoming fear of retaliation, structural disadvantage, visa insecurity and the practical barriers faced by vulnerable workers. It would also support more efficient recovery by enabling representative or aggregated claims, rather than forcing workers to pursue individual matters in isolation.

64. The establishment of a properly resourced small claims jurisdiction would substantially improve recovery rates, strengthen deterrence against non-compliance, and restore confidence that wage and entitlement laws are enforceable in practice, not merely in theory.

[12] Appendix A reproduces the small claims provisions of the *Industrial Relations Act 1996* (NSW), which largely reflected the original small claims procedure under the *Industrial Relations Act 1991* (NSW). These provisions provide a useful model for consideration in the development of a federal small claims process for unpaid wages.

[13] The maximum amount for a small claim as provided for in the NSW Industrial Relations Act 1996 is currently $100,000. See s.379 (3)(a).

65. Without these reforms, wage theft will continue to be perceived by some employers as low-risk conduct, and by many workers as a harm for which meaningful redress is out of reach.

Conclusions and Recommendations

66. Wage theft remains endemic despite the introduction of criminalisation. Young workers remain the most exposed cohort, superannuation theft continues at scale, and regulator-only enforcement is inadequate.

67. The SDA recommends:

    a. Restoring the right of registered organisations to inspect time and wages records and conduct spot checks;

    b. Embedding registered organisations as frontline compliance actors;

    c. Explicitly treating unpaid superannuation as wage theft and integrating enforcement;

    d. Establishing an accessible small claims jurisdiction that gives standing to registered organisations; and

    e. Strengthening civil remedies alongside criminal sanctions.

References

- Melbourne Law School, Fair Day's Work Report 2025 (Howe & Dillon).
- McKell Institute, Unfinished Business: The Ongoing Battle Against Wage Theft (2023).
- Senate Economics References Committee, Systemic, Sustained and Shameful (2022).
- Fair Work Ombudsman, Annual Reports.
- Australian Taxation Office, Superannuation Guarantee Gap Estimates.
- SDA National Office internal research and enforcement data.
- David Weil, "The Fissured Workplace: Why work became so bad for many and what can be done to improve it." Harvard University Press, 2014.

Appendix A

INDUSTRIAL RELATIONS ACT (NSW) 1996 - SECT 379

Small claims procedures

379 Small claims procedures

(1) A person who makes an application to an industrial court for an order under this Part may request that the application be dealt with under this section.

(2) An application that the industrial court decides to deal with under this section is called a **"small claims application"** .

(3) The maximum amount that the industrial court may order an employer to pay on a small claims application in respect of any one employee is--

(a) except as provided by paragraph (b)--$100,000, or

(b) if some other amount is prescribed by the regulations for the purposes of this section--that other amount.

(4) The industrial court is not bound by the rules of evidence when dealing with a small claims application, but may inform itself of any matter in such manner as the court thinks fit.

(5) A party to proceedings on a small claims application may be represented by an agent, but is not entitled to be represented by an agent who is an Australian legal practitioner unless the industrial court so approves. That approval is not to be given unless--

(a) all parties to the proceedings agree, and

(b) the industrial court is satisfied that the parties (other than the party who applies for approval) or any of them will not be disadvantaged.

(6) The approval of the industrial court to be represented by an Australian legal practitioner is not required if the practitioner--

(a) represents a corporation and is an officer of the corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, or

(b) represents an owners corporation constituted under the *Strata Schemes Management Act 2015* and is one of the proprietors or lessees constituting the owners corporation, or

(c) represents a member of an industrial organisation and is an officer or employee of the organisation, or

(d) represents a member of a State peak council and is an officer or employee of that council.

(7) The approval of the industrial court to be represented by an Australian legal practitioner may be given subject to such conditions as the court considers reasonable to ensure that any other party to the proceedings is not disadvantaged by the practitioner appearing in the proceedings.

(8) A contravention of subsections (5)-(7) does not invalidate the proceedings or any order made in those proceedings.

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