



**VICTORIAN  
WOMEN  
LAWYERS**

**WAGE THEFT REVIEW**

**AUSTRALIAN PARLIAMENT**

**SENATE EDUCATION AND EMPLOYMENT COMMITTEE**

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Submitted via:	Online submission on 6 May 2026
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## Submission

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### About Victorian Women Lawyers

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession.

Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community of women lawyers.

Since 1996, VWL has advocated for the equal representation of women at all levels of the legal profession and has promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating gender-based and sex-based discrimination, to achieve justice and equality for all women.

Details of our publications and submissions are available at [www.vwl.asn.au](http://www.vwl.asn.au).

### Executive summary

On 11 February 2026, the Office of the Fair Work Ombudsman (**FWO**) noted, in its response to a query from Senator Payman, that since the criminalization of wage theft under the *Fair Work Act 2009* (Cth) (**FW Act**) there have not been any wage theft prosecutions in Australia<sup>1</sup>.

VWL appreciates the opportunity to make a submission to the Senate Education & Employment Committee's review of the extent to which the wage theft framework has decreased the incidence of wage theft in Australia and any other related matters.

We note that prior to commencing criminal proceedings, the Commonwealth Director of Public Prosecutions needs to determine whether there is sufficient evidence to prosecute an employer, and consider whether prosecution is in the public interest<sup>2</sup>.

VWL submits that a gender-neutral, complaints-led approach to regulating wage theft risks systematically under-detecting underpayments in feminized, low-paid and precarious industries. This is because women may face barriers to reporting (including fear of retaliation, discrimination, migration-related precarity, and intersecting workplace harms such as harassment), meaning regulatory intelligence based primarily on individual complaints is less likely to capture the full extent of non-compliance in these settings.

VWL therefore considers that a more proactive, risk-based approach to compliance and enforcement is required, including by drawing on multiple sources of intelligence to prioritize education, audits and targeted investigations in high-risk sectors.

Gender-disaggregated or other "proxy" indicators could operate as a screening tool and be coupled with neutral verification steps (including record requests and payroll testing), for example, consideration of industry gender composition, attrition data and pay gap data.

### Current legal landscape

From 1 January 2025, it is a criminal offence for an employer to intentionally engage in conduct that results in a failure to pay certain employee entitlements<sup>3</sup>. An employer will commit an offence under section 327A(1) of the FW Act if they are required to pay an amount to an employee (such as wages), or an amount on behalf of or for the benefit of an employee (such as superannuation), under the FW Act, Fair Work Instrument or a Transitional Instrument (being a 'required amount'); and they

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<sup>1</sup> Commonwealth of Australia. (2026). Senate Education and Employment Legislation Committee: Estimates. [Education and Employment Legislation Committee 2026 02 11.pdf;fileType=application/pdf](#)

<sup>2</sup> Fair Work Ombudsman. (2025). Compliance and Enforcement Policy. [Compliance and Enforcement Policy](#)

<sup>3</sup> Fair Work Ombudsman. (2025). Compliance and Enforcement Policy. [Compliance and Enforcement Policy](#)

intentionally engage in conduct (by doing or not doing something) that intentionally results in a failure to pay that required amount in full on or before the day the amount is due for payment<sup>4</sup>.

The purpose of subsection 327A(1) is to address the criminal offence of intentional underpayment by employers. Its operation is defined by proving that the employer intended to engage in conduct that resulted in a failure to pay the “required amount” to the worker. This provision excludes honest mistakes, miscalculations, or accidental errors, which remain subject to civil penalties.

### **Lack of a gendered lens to regulatory responses**

Under the FW Act, employees who report wage theft are protected from adverse action. However, the FW Act does not currently recognize how gendered nuances impact on reporting of wage theft and underpayments, and, as a result, compliance and enforcement activities for Commonwealth regulators.

Women’s Legal Services Australia says “Women face different legal problems to men... women experience domestic, family and sexual violence at higher rates. We’re more likely to be primary carers of children. We earn less, and we’re more likely to have less assets”. In addition, Working Women’s Centre Australia says, “Gendered responses are essential as women have unique workplace experiences... The same woman who comes to our Centre who experiences sexual harassment, may have also been dismissed or sacked for speaking up about the issue, or they may have also experienced wage theft”<sup>5</sup>.

In Australia, employees earning below the National Minimum Wage are more commonly female. Relevantly, almost two in three employees earning below the National Minimum Wage are women<sup>6</sup>.

Analysis of wage theft in Australia found that the top 5 industries with the highest instances of wage theft in Australia are Public Administration and Safety, Accommodation and Food Services, Other Services Industries, Administrative and Support Services and Retail Trade<sup>7</sup>. Most of these industries have a high share of female employment. Relevantly:

- 60.2% of the Australian Public Service are women<sup>8</sup>,
- 55% of workers in the Accommodation and Food Services Industry are women<sup>9</sup>,
- 73% of workers in the Clerical and Administrative occupation are women<sup>10</sup>, and
- 55% of workers in the Retail Trade Industry are women<sup>11</sup>.

Reporting of underpayments is hindered by discrimination, precarious migration status, fear of retaliation and live risks of deportation<sup>12</sup>. In Victoria, more than half of underpayment clients (59%) report experiencing one or more additional employment-related problems in addition to their underpayments, for example, unfair dismissal, bullying and discrimination<sup>13</sup>.

Women are twice as likely as men to experience bullying and harassment at work, both recognised forms of gendered violence<sup>14</sup>.

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<sup>4</sup> Ibid

<sup>5</sup> Compagioni, M. (2026). Women’s Legal Services in Australia: Understanding Your Options. SBS. [Women’s legal services in Australia: Understanding your options | SBS English](#)

<sup>6</sup> Tomlinson, J. (2024). Characteristics of Employees on the National Minimum Wage. Fair Work Commission. [Characteristics of employees on the National Minimum Wage](#)

<sup>7</sup> Reckon Limited. (2026). Wage Theft Australia. [Wage theft in Australia](#)

<sup>8</sup> Commonwealth of Australia. (2026). Building on The Data – Gender Equality in the APS. Australian Public Service Commission. [Building on the data—Gender equality in the APS | Australian Public Service Commission](#)

<sup>9</sup> Ferguson, S. (2024). Pre-Budget Submission. Australian Hotels Association. [Pre-Budget-submission-25-January-2024.pdf](#)

<sup>10</sup> Commonwealth of Australia. (2025). WGEA Gender Equality Scorecard 2024-25. Workplace Gender Equality Agency. [WGEA Gender Equality Scorecard | Latest results employer reporting](#)

<sup>11</sup> Australian Government. (2026). Retail Trade. Jobs and Skills Australia. [Retail Trade | Jobs and Skills Australia](#)

<sup>12</sup> Australian Council of Trade Unions. (2018). Wage Theft: The Exploitation of Workers Is Widespread and Has Become a Business Model. [media1385221d170-wage-theft-in-australia-the-exploitation-of-workers-is-widespread-and-has-become-a-business-model-actu-submission-15-august-2018.pdf](#)

<sup>13</sup> Cox, E., Grant, G., Leoncio, K., Zhou, C. (2023). The Challenge of Recovering Underpaid Wages. South-East Monash Legal Service Inc. [The-Challenge-of-Recovering-Underpaid-Wages.pdf](#)

<sup>14</sup> Safe Work Australia. (2021). Psychosocial Health and Safety and Bullying in Australian Workplaces. Safe Work Australia. [Psychosocial health and safety and bullying in Australian workplaces \(6th edition\) | Safe Work Australia](#)

The top industries impacted by wage theft are also disproportionately impacted by high rates of sexual and gender-based harassment, noting, for example, that the Australian Human Rights Commission has reported that approximately 40% of workers in the Retail Industry, approximately 34% of workers in the Accommodation and Food Services Industry, and approximately 25% of workers in the Public Administration and Safety, and Administration and Support Services Industry have experienced sexual and gender-based harassment<sup>15</sup>.

Despite high risks of experiencing harm, less than 1% of workers experiencing sexual and gender-based harassment (both recognized forms of sex discrimination), report to the Australian Human Rights Commission; Rates of reporting are similarly low for other forms of discrimination<sup>16</sup>.

The vast majority of harmful behaviour goes unreported, not because it isn't happening, but because our systems are not designed to prevent it. Australian researchers have concluded that most victims of discrimination and harassment do not complain<sup>17</sup>.

For this reason, rather than relying on complaints as the basis for compliance and enforcement activity, the Commonwealth should consider opportunities for proactive enforcement in high-risk industries, in a manner that considers and responds to gendered nuances in the regulatory response.

This is not to suggest that gender causes wage theft or that any particular employer should be inferred to be non-compliant merely because it employs women or reports particular gender equality outcomes. Rather, where gendered barriers depress the likelihood of individual complaints, reliance on complaints alone will systematically under-detect non-compliance in feminised, low-paid and precarious work.

In that context, gender-disaggregated and related "proxy" indicators can be used as screening tools to help the Fair Work Ombudsman identify sectors and workplaces where underpayment risks are elevated and where proactive education, audits and targeted investigations are warranted.

Importantly, any use of such data should be transparent, applied at an appropriate level of aggregation, and coupled with record requests and payroll testing so that enforcement decisions are based on objective evidence of underpayment risks.

For example, WGEA data may assist to identify industries or cohorts where structural factors (such as high female resignation rates or persistently large gender pay gaps) suggest elevated workforce instability or weaker governance settings, which can warrant closer regulatory attention.

WGEA's *Gender Equity Insights 2025: The Power of Balance* report notes that high female resignation may be a sign of cultural and structural barriers that discourage women from remaining in employment<sup>18</sup>. Increasing the representation of women in executive leadership roles is also associated with declining organisational gender pay gaps<sup>19</sup>. Used appropriately (and in conjunction with other indicators), this type of data could help the FWO prioritise proactive compliance activities in sectors where complaints are less likely to be made.

### **Complicated Court processes to recover unpaid wages**

Under section 548 of the FW Act, workers can ask that certain applications be dealt with as a small claim proceeding. For instance, if a worker believes they have been underpaid and would like to make a claim in the Fair Work Division of the Federal Circuit and Family Court of Australia (**FCFCA**), the

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<sup>15</sup> Australian Human Rights Commission. (2022). Time for respect: Fifth national survey on sexual harassment in Australian workplaces, Fifth national workplace sexual harassment survey. Australian Human Rights Commission. [2022.11.25 time for respect 2022 final digital.pdf](https://www.hrc.org.au/media/2022/11/25-time-for-respect-2022-final-digital.pdf)

<sup>16</sup> Parsons, S., et al. (2025). Safety Regulation for Primary Prevention of Gendered Violence: Regulating Power Imbalances, Structural Discrimination and Structural Inequality: National Joint Submission to Safe Work Australia's 2025 Best Practice Review. Working Women's Centre Australia. [Final-National-Joint-Submission-to-Best-Practice-Review-Safety-Regulation-for-Primary-Prevention-of-Gendered-Violence-31.10.25.pdf](https://www.workingwomen.org.au/files/documents/Final-National-Joint-Submission-to-Best-Practice-Review-Safety-Regulation-for-Primary-Prevention-of-Gendered-Violence-31.10.25.pdf)

<sup>17</sup> Smith, B. (2023). Respect@Work Amendments - A Positive Reframing of Australia's Sexual Harassment Laws. Australian Journal of Labour Law. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4640802](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4640802)

<sup>18</sup> Australian Government, WGEA, Bank West, Curtin University. (2025). Gender Equity Insights 2025: The Power of Balance. <https://www.wgea.gov.au/sites/default/files/documents/BCEC-WGEA-2025-Gender-Equity-Insights-Report.pdf>

<sup>19</sup> Australian Government, WGEA, Bank West, Curtin University. (2017). Gender Equity Insights 2017: Inside Australia's Gender Pay Gap. Commonwealth of Australia. [BCEC WGEA Gender Pay Equity Insights 2017 Report.pdf](https://www.wgea.gov.au/sites/default/files/documents/BCEC-WGEA-Gender-Pay-Equity-Insights-2017-Report.pdf)

worker will need to assess the value of their own claim (i.e. if its \$100,000 or less), if they are not seeking a pecuniary penalty order, if their claim does not relate to a period that is more than 6 years before the proceedings commence, if their claim relates to FW Act entitlements under the National Employment Standards (**NES**) or section 323 of the FW Act, if their claim is under a Fair Work Instrument, and if their claim is because of a 'safety net contractual entitlement.'<sup>20</sup>

As of 1 July 2025, the FCFCA prescribes the fees that a worker will need to pay in order for their claims to be submitted in Court. The filing fee can range from \$300 to \$560 if it relates to a Fair Work Small Claims Application, and there are different fees associated with attending hearings daily plus other associated fees if the worker attends a mediation, or seeks an injunction, etc.<sup>21</sup>

For a woman who may be experiencing other conditions of vulnerability (e.g., exposure to workplace behavioral harm at work, family and caring responsibilities, precarious migration status, family and domestic violence), Court processes may be difficult to navigate and compound risks of speaking up due to experiences of underpayment and worker exploitation.

## Recommendations

### 1. Consider collection and reporting of gendered data in FWO reports and investigations

Given the unique risks faced by women in the workplace, the Fair Work Ombudsman should collect and report on underpayment reports and investigations by gender.

### 2. Consider opportunities to strengthen proactive compliance and enforcement

A more proactive, risk-based approach to compliance and enforcement is required, including by drawing on multiple sources of intelligence to prioritize education, audits and targeted investigations in high-risk sectors.

Use of gender-disaggregated or other "proxy" indicators (for example, consideration of industry gender composition, attrition data and pay gap data) could operate as a screening tool, coupled with neutral verification steps (including record requests and payroll testing) so that enforcement action is ultimately grounded in objective evidence of underpayment.

### 3. Simplify the processing of civil underpayment claims while criminal proceedings are ongoing.

The Commonwealth should further simplify, streamline and reduce the costs associated with recovery of underpayments. Extensions to free advice by the Fair Work Ombudsman on what to do to recover unpaid wages and receive assistance should also be considered.

### 4. Extend support to women and gender diverse people seeking recovery of wages

The Commonwealth should continue to support services that support women and gender diverse people to recover unpaid wages, particularly those experiencing conditions of vulnerability (e.g., migrant and refugee women and gender diverse people, including those with disability).

The Commonwealth may provide information on how wage theft plays out in the workplace, and options to speak up in event of exploitation. This information should be provided in various languages so migrant and refugee women and gender diverse people, including those from culturally and racially marginalized backgrounds, are fully aware of their work rights and obligations.

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<sup>20</sup> Federal Circuit and Family Court of Australia. (2026). Fair Work. [Fair work: Overview | Federal Circuit and Family Court of Australia](#)

<sup>21</sup> Federal Circuit and Family Court of Australia. General Federal Law Fees. [General federal law fees | Federal Circuit and Family Court of Australia](#).

## **Conclusion**

The strengthening of compliance and enforcement activities to prevent wage theft in Australian workplaces requires application of a gendered lens to ensure a proactive regulatory approach which recognizes that those most likely to be subjected to wage theft are least likely to speak up.

Equally, those services supporting women and others experiencing conditions of vulnerability should be prioritized for Commonwealth funding.

Vulnerable workers should be well-informed of their work rights as soon as they enter the Australian workforce and they should be provided with appropriate access to legal help and support if the time comes that they need to recover unpaid wages.