

Inquiry into the extent and causes of unlawful non- payment or underpayment of employees' remuneration by employers and measures that can be taken to address the issue.

Submission by Master Grocers Australia Ltd

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Table of Contents

1. About Master Grocers Australia Ltd.....	3
2. Executive Summary.....	4
3. MGA/TMA responses to the causes, extent and effect of underpayment of wages	5
4. Conclusion.....	7

1. About Master Grocers Australia Ltd

- i. Master Grocers Australia Ltd trading as MGA Independent retailers- Timber Merchants Australia (“MGA/TMA”) is a national employer industry association representing independent grocery supermarkets, liquor stores and timber merchants in Victoria, New South Wales, the Australian Capital Territory, Western Australia, Tasmania, Queensland and the Northern Territory.
- ii. MGA/TMA businesses around Australia range in size from small to medium or large businesses. While many of MGA/TMA’s members are small family-operated businesses that employ 25 or fewer employees, these businesses account for the employment of more than 120,000 full time, part time and casual employees, who are employed to work across a seven-day working week. This represents retail sales in excess of \$15 billion.
- iii. There are 2,700 branded independent grocery stores, trading under brand names such as: Drakes, Farmer Jacks, FoodWorks, Foodland, Friendly Grocers, IGA, IGA Xpress, SPAR, Supabarn and Supa IGA, with a further approximately 1,300 independent supermarkets trading under their own local brand names. In addition, there are numerous independent liquor stores operating throughout Australia and trading under names such as: Cellarbrations, The Bottle O, Bottlemart, Duncans, and Local Liquor, which are either single or multi-store owners. Our members also own independent hardware stores trade under brand names including Mitre 10, Home Timber and Hardware, Thrifty Link and True Value Hardware. These stores which collectively employ more than 120,000 staff are comparatively much smaller when juxtaposed against the large supermarket chains of Coles, Woolworths and Bunnings, which combined represent approximately 80 per cent of the retail supermarket, liquor and hardware industries.
- iv. MGA/TMA members in Australia have traditionally always been community-focused, with many of supermarkets making and returning substantial contributions to the communities in which they trade. This is not only demonstrated in the forged relationships between independent businesses and their local communities but also in the strong commitment of independent businesses to support their local communities, through local fundraising initiatives that support schools, kindergartens, hospitals, clubs and so on. Independent retailers also support the businesses of local suppliers and service providers as well as provide employees with employment. Many of these employees include working mothers, tertiary students, trainees, and apprentices and work under either the General Retail Industry Award, Timber Industry Award or a business Enterprise Agreement.

2. Executive Summary

- i. The Senate Standing Committee is seeking submissions on a topic that is causing considerable concern in all industries at the present time, this involves those who are the victims of alleged underpayment of wages. There have recently been a significant number of claims by employees who claim they have not been paid their correct entitlements. These claims often include many employees who are extremely vulnerable and unaware of their correct entitlements. The big issue that has arisen is whether these are simple cases of underpayment of wages claims that could be the result of an unintended error or is this ‘wage theft’ and therefore should it be criminalised?
- ii. Australia has a complex system of awards where there are numerous penalties, entitlements, overtime rates and superannuation payments payable at various times of the working week. The rates of payment also vary according to age and status within the one business and when added to some of the complexities that exist with the various awards it is not unusual to find employers baffled as to what wages they should be paying.
- iii. The Senate enquiry that has been formed has posed a number of questions and has attempted to answer several of these questions in order to explain why we do not believe that underpayments of wages, unacceptable though they may be, should be demonised as ‘criminal.’ MGA/TMA strongly believes that the award system in Australia is the most complicated wage system in the western world. The majority of employers set out to pay their employees correctly and MGA/TMA members and those who are members of other associations do not set out to thwart the system. They genuinely endeavour to be compliant and there may be occasions when a mistake has been made. It would be a travesty of justice to label such an error as criminal. There is a vast difference between the “deliberate exploitation of workers” where hundreds of employees are not paid any penalties and incorrect wage rates and an employer paying an incorrect penalty rate to an employee due to a misreading of an award and a consequent miscalculation of a wages payment.
- iv. MGA/TMA will comment on the need to be vigilant in ensuring that employers are aware of their responsibilities to ensure that their staff are paid correctly but will also comment on the need to ensure that the workplace relations system must operate in a manner that allows for simplicity of understanding in respect of how payments are must be made to staff by keeping the award system uncomplicated.
- v. It is essential that there are procedures in place to provide for ease of employer compliance and that there is a model for the repayment of any lost wages. However, the use of the word “theft”

implies the consequent need for some punitive action and that is where forms of penalty need to be very carefully considered. If some criminal liability attached to the act of underpayment and a period of imprisonment was envisaged then this would surely be indicative of an overreaction to what should never be categorised as larceny.

3. MGA/TMA responses to 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.

a. The forms of and reasons for wage theft – is it regarded as a cost of doing business?

- i. Forms of alleged wage theft may include deliberately failing to make payment for work performed. There is undoubtedly the deliberate action of not paying wages according to the minimum standards set in the applicable modern awards. However, it should be noted that the modern awards were created as from 2010. As an example, this included the making of the General Retail Industry Award which has been through many changes during the Four yearly reviews implemented in the Fair Work Commission. Consequently, changes to the award have been frequent and although wage changes are advised to retailers, they could easily unintentionally overlook an increase. This raises the question whether an incidence of inadvertent non-payment of an increased penalty is, a deliberate act and whether that can be regarded as “theft”. The definition of theft is “an unauthorized taking, keeping, or using of another person's property which must be accompanied by the intention of dishonesty with the intent to permanently deprive the rightful owner of that property “ It is acknowledged that such errors are not acceptable but where there is no ‘intent’ and therefore cannot be classified as ‘theft’ . Conversely where there is an organisation that is aware of the rules and has the ability to be vigilant in their practices then the governance should be stricter but the proof of ‘theft is still difficult to impose.

b. The cost of wage and superannuation theft to the national economy

- i. The economy relies on personal taxes and there is need to maintain a reliable superannuation system for the future benefit of all workers. It is therefore incumbent on all employers to ensure that their employees are paid correctly and that there is compliance in submitting the correct taxation and superannuation deductions from wages. If compliance is continuously faulty then inevitably the economy will suffer. If taxation is not paid and employees will miss valuable

superannuation contributions which in total could be a burden to the community over time. Any fault in the need to make the appropriate deductions is unacceptable and this should not happen.

- ii. The so called 'gig economy' is undoubtedly the prime offender when considering the effect on the national economy of non- payment of wages and superannuation. This problem has been an issue for years and is prevalent in situations where cash payments are made for work performed rather than in situations where employment has been formalised. These situations may happen in businesses but are generally the result of deals done between individuals that are not related to any award system. These actions have long been the subject of concern and unfortunately are still practised. There is a community responsibility not to engage in this practice and to encourage legality generally in business.
- iii. However, where any underpayment of wages is made in a business that is required to operate with in the current industrial relations system again it is questionable whether such action can be classified as 'theft'. It is correct to say that the economy will be deprived of the benefits that would normally be collected from wage earnings. It can happen and any error is one that should be penalised but it does not necessarily constitute a criminal act and should not be classified in such a Draconian way.

c. Best means of identifying and uncovering wage and superannuation theft

- i. There are National Government bodies, with branches in each State and Territory that are able to provide advice and assistance in respect of wage rates, penalties, taxation and superannuation. They visit employers and publicise the legal monetary obligations of employers due to their staff. In addition, there are industry associations and unions which support their members and offer assistance to employers and employees. So, there is considerable availability of information. Additionally, websites are able to offer information for those who do not have membership of organisations or who choose not to seek out Government advice. Generally, employees themselves will often investigate any perceived non-compliance as all these organisations are freely available to them. Problems may lie however, with those who are foreign workers who are not familiar with the availability of information or who do not understand their rights.

d. Effective means of recovering unpaid wages and deterrents

- i. The only way to recover unpaid wages is to conduct an audit of the employer's business and consider the ability to repay any unpaid wages. We have recently seen large businesses being

forced to sell up all their assets in the hope of staff being paid their unpaid entitlements. This is obviously the only solution in many cases. However, there is also evidence of large repayments being made to employees where underpayments have been detected and the employer is in a position of being able to meet those payments.

- ii. The Fair Work Ombudsman does from time to time conduct audits of employers' workplace practices in certain regions. They generally advise when and where they will be held. Perhaps there should be greater emphasis on employers conducting annual audits themselves or preferably by their industry associations in the interests of ensuring compliance.
- iii. Recovery of unpaid wages should be paid by the employer at the current rate with penalties.

4. Conclusion

- i. There have been a number of employers who have come forward and openly declared that they have made errors in the calculations of wages and this should be recognised as being a sign of a genuine error having been made. The majority of employers understand the consequences of errors being made and they try to avoid making mistakes not only because of their employees' welfare but because the reputation of their business is at stake. There will always be a few who will want to cheat the system but these are few. Members of MGA/TMA endeavour to pay their staff correctly and there is considerable guidance given by MGA/TMA which is easily accessible.
- ii. There is a need to establish an industrial relations system that is easy to follow and less complex than that which exists currently.
- iii. To further illustrate the complexity of the award system, under the General Retail industry Award, an employee aged 19 could have seven different pay rates in one week and an employee aged 21 could have another 7 different wage rates again from his or her younger colleague . That is even before meeting other often confusing considerations in the award. The complexity of the award system demonstrates that there is serious need for industrial relations reform. While there are cases of underpayments of wages of the magnitude that has been witnessed recently it is easy to see how businesses could be forced to close. Productivity will decrease and underemployment will increase.
- iv. Whilst we continue to operate under a system that is so full of complexities, we can only expect problems and until we have an industrial relations system that can provide proper guidance and clarity then people will continue to make errors.

- v. Therefore, to criminalise errors that are the result of a system that was created by the very people who now wish to declare these errors as “crimes” is unfair and completely unjustified.

MGA/TMA thanks the Senate for the opportunity to make this submission.



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