

MEMBERS:

Hon. I. Pnevmatikos MLC (Chairperson)
Hon. C. Bonaros MLC
Hon. E.S. Bourke MLC
Hon. T.A. Franks MLC
Hon. T.J. Stephens MLC

WITNESS:

CAVANOUGH, EDWARD, Manager of Policy, The McKell Institute

93 The CHAIRPERSON: Welcome to the meeting, Mr Cavanough. The Legislative Council has given authority for this committee to hold public meetings. A transcript of your evidence today will be forwarded to you for examination for any clerical corrections. Should you wish at any time to present confidential evidence to the committee, please indicate and the committee will consider your request. Parliamentary privilege is accorded to all evidence presented to a select committee; however, witnesses should be aware that privilege does not extend to statements made outside of this meeting.

All persons, including members of the media, are reminded that the same rules apply as in the reporting of parliament. Further, I remind camera operators—although that is not an issue—that, as in the chamber, they are to focus on the witness or members speaking and should not film individuals attending the gallery.

First, I will introduce members of the committee. On my left, the Hon. Connie Bonaros; the Hon. Emily Bourke; Leslie Guy, secretary to the committee; the Hon. Tammy Franks; and the Hon. Terry Stephens. We have had an opportunity to consider your extensive submission and you are invited to make an opening statement before we open the meeting to questions.

Mr CAVANOUGH: Great, I will fire away then. First of all, thanks everyone for inviting me to this committee today. My name is Edward Cavanough, and I am the Manager of Policy at the McKell Institute. Today, I'm here to talk about wage theft and to tell the story of this slow motion crime that directly affects hundreds of thousands of people across Australia and this state and broadly impacts every one of us here in this state and beyond.

But, first, I just want to briefly outline what the McKell Institute and what our contributions to this debate have been in recent months. The McKell Institute is a not-for-profit research institute founded in about 2011 and we work across Queensland, New South Wales and Victoria. My role is a national one, but I am based here in Adelaide. Today, I want to primarily speak about the submission that we have made to this inquiry, but I also want to address some of the other work that we have done.

I joined the institute in 2015, but it wasn't too long before that that I was working in environments where wage theft was unfolding in real time in front of me. For several years, I worked at the Central Market and in hospitality and, for the most part, I was paid as I was personally meant to, but every now and then you would hear stories and you would see things that you knew just didn't sit right, even as a young worker. There would be young trainees on their third or fourth unpaid trial shift or kids getting paid cash in hand that you knew was under the award. There would be payslips missing for months and superannuation going unpaid.

I also spent many years playing music and studied just right across the road at the conservatorium, and I played at weddings and venues all across this city and the country. I think the music business can very succinctly demonstrate the power imbalance that is at the centre of how wage theft occurs. Venues and promoters have an upper hand, and they offer the gigs and the crowds and the stages, and getting on their bad side as a musician can be suicide, so if you do not get paid you just do not have the recourse or the power to address it. I mention these experiences

not for sympathy but just to emphasise that the way that we looked at this issue is not from some distant academic standpoint; it is informed by the lived experiences of myself and people I know and have worked with.

Before getting into the detail of some of the work that we have done, I just want to briefly clarify what we are actually talking about when we say 'wage theft'. I know there's been some conjecture in the debate establishing this committee about the use of that term 'theft', but for us at the McKell Institute there's simply no other way to describe this as anything but theft.

Of course, there are employers who make honest mistakes, and this can be reflected in any law-strengthening efforts to stop wage theft, but it is those engaged in deliberate underpayment or consistent negligence of their duties that are participating in theft. As I said, they are engaging in what is effectively a slow motion crime that doesn't just impact those directly affected but, in the end, impacts all of us. We've released a subsequent report, which is called Ending Wage Theft, and in that we define it as 'the unlawful underpayment of employee remuneration by employers'.

This can take a variety of forms, including but not limited to underpaying wages; penalty rates; superannuation; overtime; commissions; entitlements, such as sick, annual or carers leave; termination payments; and allowances, as well as requiring workers to repay money earned; or making unauthorised deductions from employee pay. For me, the question of whether or not this is theft, it cannot be described as anything else.

You have our recent submission here, but we have also done other work on this issue. The first was mid last year in response to the Queensland parliament's inquiry. That inquiry received a really wide range of submissions but, as the evidence was gathering, we noticed that there had been a lack of economic analysis and a lack of estimates on the extent to which wage theft was impacting the Queensland economy itself.

There are other organisations that are very well placed to tell the personal stories of wage theft but fewer engaging in this sort of economic analysis. I think the primary reasons for that are the lack of data that's available and the piecemeal nature of that data. Understanding that, our Queensland report, which we submitted to the inquiry, attempted to crunch the numbers that are there and used the detailed Fair Work Ombudsman audit campaign information to estimate the extent that it's impacting the Queensland economy.

Our Queensland report identified that the likely economic cost of direct wage theft was about \$1.2 billion in that state. That's before we considered superannuation, which is another \$1.1 billion. Importantly, it noted that since the 2012-13 financial year the Fair Work Ombudsman, which is obviously responsible for enforcing so much of this workplace compliance, had its overall funding cut almost in half. In that 2012-13 financial year, the Fair Work Ombudsman was granted \$220 million, and in the recent federal budget it was just \$120 million. This has real life consequences.

Nationally, it's thought that there are only 200 or so Fair Work Ombudsman inspectors working, and the labour market has now reached around 12 million people. Can you credibly claim that that is sufficient? This lack of resources has created an environment where, if we are being honest, most people who engage in this sort of behaviour are highly unlikely to ever be caught, let alone prosecuted or forced to reimburse any money.

Focusing on the South Australian data that we have, the report and the submission we made to this committee adopted a similar methodology. We examined in detail every Fair Work Ombudsman audit campaign that occurred in this state, of which there have been 23. We also looked at the comprehensive data relating to the superannuation underpayment that had been collated by Industry Super Australia. The findings are alarming, in line with what we saw in Queensland. I think the evidence is growing around the nation.

Our estimate was that around 170,000 South Australian workers, which is around one in five, are likely impacted by wage theft to varying degrees. That's not everyone getting half their pay taken out of their pay packet, but it could be the sorts of smaller types of wage theft that I mentioned earlier. We estimate—relatively conservatively, I think—that the aggregate impact of this degree of wage theft was likely between \$280 million at the smallest end and up to \$480 million, excluding superannuation.

By looking at the established data on superannuation underpayment by Industry Super Australia, we estimate that around \$270 million of superannuation is not being paid to South Australian workers and that about one in three South Australian workers who are entitled to superannuation aren't getting paid their full payment. When we aggregate this, this equates to well over \$500 million per annum that is the total cost of wage theft in this state.

Importantly, we also identified that there is very little oversight in South Australia on this issue. Only slightly more than 1 per cent of all registered businesses in South Australia have ever been audited. Of those audited, close to 40 per cent were found to be in contravention of workplace laws to varying degrees. More optimistically though, I think the report also identified that the South Australian government and other state governments can actually do more and that it's not simply a federal responsibility.

The primary recommendation of that report was that we do not move to repeal the labour hire licensing regime that we have in this state, which I think, and most people looking at this issue agree, is a relatively important component of ensuring that wage theft doesn't occur. We also recommend that it should be criminalised at a state level. Of course, we need a national approach to this, but states do have the authority to move ahead with criminalisation. The state government also has a responsibility to ensure its procurement policy is watertight and that all supply chains relating to government projects ensure that wage theft is not occurring.

Another idea is also looking at the way superannuation is paid. One of the big issues regarding wage theft is that superannuation is only paid quarterly in many businesses, and that's what it's required to be. This means that workers often do not see in real time what superannuation they are receiving and it's hard for them to work out a time. I think the state government has a role to play in perhaps reimagining the way they pay superannuation to many of their employees to set a good example there.

The state government could also lead on training and education programs, particularly those in high-risk industries and demographics that I identified. Importantly, I think it's beholden on this state government and all state governments to partner with other governments in other jurisdictions to lobby the federal government to adopt a best practice national approach. This type of collaboration between states isn't unprecedented, even in recent periods.

We saw recently the state government collaborating with the Tasmanian government and the Northern Territory government to lobby the federal government to amend the way that immigration laws were structured so that they orientated more individuals to these smaller jurisdictions. So there is precedent for state governments to collaborate on important issues to change the federal government's mind on things, and I think it's responsible for the state government to adopt that approach here. I am happy to move on to questions.

94 The CHAIRPERSON: Your submissions have heavily covered the work of the Fair Work Ombudsman who has a role to weigh the interests of employers, employees and the economy. Based on your research, would you say that the efforts of the Fair Work Ombudsman are balanced in South Australia?

Mr CAVANOUGH: The Fair Work Ombudsman, I think, do everything they can with the resources they have. The evidence I have heard anecdotally is that the individuals operating at the Fair Work Ombudsman do their best with what they have, but we can't get around the fact that it's funding has so dramatically reduced over the last six or seven years. As I said, it has almost been reduced by half. Effectively, what that results in is many cases going to the Fair Work Ombudsman and not really being answered and certainly not prosecuted all the way through.

I read one stat recently that in 2016-17 there were over 26,000 claims to the Fair Work Ombudsman; 55 of them went all the way through to prosecution. There is also a problem with the punishments that are enacted being completely inadequate and not acting as a deterrent whatsoever. There are a few cases but one comes to mind. Recently there was a fast food worker in Sydney who was found to have been underpaid; I think it was \$16,000 over the last two or three years. He went through all the processes to get his money back, which he did eventually. The employer was fined \$60,000, which is slightly more than three times what he had effectively stolen from his worker, and that is the end of the case.

We have also seen data published by the Fair Work Ombudsman that almost 40 per cent of the entities that they audit reoffend when they go back to reaudit. Even tapping nefarious employers on the shoulder and saying, 'You can't do this,' is not acting as a powerful disincentive for them to stop engaging in that behaviour. I don't think that balance has been struck appropriately. Frankly, I think it comes down to the Fair Work Ombudsman being absolutely stretched in its ability to meet this demand in a rapidly growing labour market with rapidly shrinking resources.

95 The CHAIRPERSON: In other submissions the committee has received, there has been a suggestion or a proposal, if you like, that further funding for the Fair Work Ombudsman would be an effective approach to rectify wage theft or the occurrence or the prevalence of wage theft. I note in your own submissions that in South Australia only 1 per cent of businesses have been investigated. As a smaller state, we see fewer resources in South Australia in comparison to our fellow states. Can you please provide some detail in terms of the impact this has on the occurrence of wage theft and whether further funding will assist in relation to the issue?

Mr CAVANOUGH: It does need to receive further funding, absolutely. The Fair Work Ombudsman, if it continues the trajectory it's on, will continue to diminish its capacity to do anything. The scale of this issue is so significant, though, that even if we increased the Fair Work Ombudsman funding tenfold tomorrow, this is still going to be occurring. As I said, there are 200 inspectors authorised by the Fair Work Ombudsman operating nationally. In Queensland, we know that there were only 40. I don't have the figure for South Australia, but you would assume that there are less on the ground in South Australia than there are in Queensland.

The unfortunate reality is that we can't just give hundreds of millions of dollars more to the Fair Work Ombudsman and expect that to be it. There is an actual obligation on the Fair Work Ombudsman to partner with both employer representatives and employee representatives, so peak bodies and unions, and to collaborate with their resources. They have to actually be able to enter workplaces, to be able to help their members, whether it's a business or whether it's an employee, actually comply with the laws that they are mandated to comply with or get their full entitlements from their employer.

I think we do need to lobby hard for the federal government to increase the funding for the Fair Work Ombudsman, particularly in responding to the cases that come into it. We see so many lengthy, unanswered calls. As I said, there weren't many cases going all the way through to prosecution. There are certainly areas where the Fair Work Ombudsman would be helped if there were X resources, but we do need a more holistic approach. We need to actually collaborate, I think, between peak bodies, unions and the Fair Work Ombudsman to fix this problem.

96 The Hon. E.S. BOURKE: Sorry to jump in there, Madam Chair. So, you are suggesting that if there were further moves to remove unions from workplaces and prevent them being able to go in and discuss with the workers their work safety, that would be an issue?

Mr CAVANOUGH: Absolutely that would be an issue. It would actually also be in contravention of International Labour Organization regulations. Australia is a signatory to article 5 of Convention 81 in the International Labour Organization and the language there is pretty clear. The article basically talks about having a federal labour inspectorate for every signatory to the International Labour Organization, of which Australia is one. But, one of the articles in that convention says that the labour inspectorate is basically mandated to promote collaboration between officials of the labour inspectorate and employers and workers, or their organisations.

We are already signatory to a convention where we need collaboration between the Fair Work Ombudsman, unions, employer peak bodies and the like. Restricting the capacity of unions or any other entity to actually engage in that sort of work is certainly going to be detrimental and we are going to see what is a rapidly increasing rate of wage theft probably continue to rise.

97 The Hon. T.A. FRANKS: You have noted that we should be doing all we can to ensure the supply chain for government contracts ensures fair payment. Do you have suggestions for how that could be done or strengthened? Do any of those suggestions involve the Office of the Industry Advocate?

Mr CAVANOUGH: I'm not sure how much detail we go into on that in our submission. I would recommend that there is effectively a root and branch review of procurement policy at the state level. In terms of the second part of your question, I don't have the details to address that.

98 The Hon. T.A. FRANKS: Do you have other suggestions?

Mr CAVANOUGH: As I said, we need to have effectively a root and branch review of what's going on. I think the thing we should be working towards is making it clear to businesses that seek engagement with government contracts or government projects that, if they are found to be in contravention of workplace laws, they can't do business with the government. That is a powerful disincentive for companies that are working—it may be subcontracting down the line—if we can make it clear that they are not able to do business with governments, if they are contravening laws repeatedly. I'm not talking about those one-time offenders who might have made a genuine mistake. I think that's something we should work towards.

99 The Hon. T.A. FRANKS: What about something like the construction industry security payments legislation? Do you think that functions?

Mr CAVANOUGH: I'm not across the detail on that specific legislation.

100 The Hon. T.A. FRANKS: Sure, thanks.

101 The Hon. T.J. STEPHENS: Thanks for your evidence. I was also going to touch on the government procurement processes and I was just hoping you could give me some historical examples of where you think wage theft occurs.

My second question to you will be about the cashless economy that just seems to be more and more imminent. Is that going to help, in part, solve the problem of wage theft, because there is always then a record of what goes in and what goes out? When you pay by cash there is no record. It just seems to me that young people I come into contact with look at cash as if it's almost a strange, foreign thing: you know, it's tap a card and keep moving. Do you have some comments on that?

Mr CAVANOUGH: On the first point, I think one of the industries where there are high rates of wage theft, certainly higher than some others, is the construction industry. As I was saying, that is an industry where there is a lot of subcontracting, a broad array of parties involved.

It is certainly difficult to monitor every single system within each of those subcontractors engaged in government projects, but there needs to be clear rules in place that stipulate that if you are repeatedly flouting those rules then you can't engage in government projects. That is going to act as a powerful disincentive. I don't know of specific examples on specific projects where that is happening, beyond the understanding that the construction industry is particularly prone to wage theft broadly.

102 The Hon. T.A. FRANKS: What they do is just reconstitute as a new body and apply for the next round of contracts.

Mr CAVANOUGH: And this is one of the reasons we think the labour hire licensing regime is very important. It effectively acts as a framework where you can't do that.

103 The Hon. T.A. FRANKS: Absolutely.

Mr CAVANOUGH: In terms of the cashless economy I do think that would help, but one of the problems with wage theft is that it is very broad. Cash payments is one common area where you will see it happening. As I mentioned, I used to work in the Central Market and there were people working there who you hadn't seen the day before and you didn't see the day after, and they were getting cash. It happens all the time, and often they are getting paid under the award. That is just the reality.

The more we move away from cash it is less likely, but that is going to take a while. The cashless economy in Australia is about \$8 billion, I think, of people getting paid in cash. That is not going to evaporate overnight. There are also other forms of wage theft that extend far beyond just the cash underpayments.

104 The Hon. T.J. STEPHENS: But cash would be the hardest thing to trace and track, I would have thought, in regard to underpayment.

Mr CAVANOUGH: Absolutely; I would agree with that. I do think that the more we move away from cash we are going to see that form of wage theft become more difficult to engage in.

105 The Hon. C. BONAROS: We have just touched on the issue of labour hire laws, and that is the issue I want to canvass. We had the former government here introduce labour hire legislation that should have come into operation in March this year. That has now been put on hold by the current government, and legislation was introduced to effectively dismantle that scheme. Am I correct that South Australia is now the only major state without such a scheme in place, in lieu of the federal legislation applying?

Mr CAVANOUGH: I don't believe every state has labour hire legislation.

106 The Hon. C. BONAROS: No; but in terms of a major—

Mr CAVANOUGH: Perhaps; certainly it is the only jurisdiction seeking to reverse what they have on the books.

107 The Hon. C. BONAROS: The current government have effectively put the whole scheme on hold. They are not accepting applications, they are returning fees that were paid under the scheme—this is according to the government advice provided. One of the responses they give to those who are concerned is, 'If you are concerned, if you have issues, go to the Fair Work Ombudsman or go to SafeWork SA.'

Based on the evidence you have given today, that is really not a solution, is it? If I'm one of the people impacted by those labour hire arrangements the response, in terms of, 'Well, contact the Fair Work Ombudsman or SafeWork SA,' isn't really going to do a lot to assist me.

Mr CAVANOUGH: This is illustrative, I think, of the buck-passing that goes with this. I find it quite odd, understanding at state level that there is little that state governments can do to improve the situation within their own jurisdiction. This happens all the time, and it is why we haven't had many state-based solutions to this.

The default response is that it is a federal government responsibility. I am sympathetic to some of the red-tape arguments around labour hire licensing, repeals and the like, but having these systems in force, first of all, I think it actually practically works. You have the good operators, fully capable of engaging in getting licences and the like. The only people it's benefiting are those organisations that are doing, frankly, nefarious things. They are certainly in the minority, but they exist. You can't just expect all this extra burden to be placed on the Fair Work Ombudsman when it's already so under-resourced and it's so strained.

108 The Hon. C. BONAROS: But, in part, you would agree that we have a solution here that would go a long way towards addressing that issue—

Mr CAVANOUGH: Yes.

109 The Hon. C. BONAROS: —and we are currently looking to undo that scheme, effectively. Your advice to this committee, insofar as that legislation is concerned, I imagine would be that we should be implementing the legislation that was introduced?

Mr CAVANOUGH: I certainly think we should be implementing the legislation and undoing it is, I think, a relatively dangerous thing to do because it's effectively making South Australia look like a soft touch. South Australia has the capacity to do this smartly. I'm very sympathetic with the idea of not wanting to entangle businesses in unnecessary red tape and the like—a fair enough argument. This is one of those areas where the small amount of red tape you could say associated with it is absolutely vital for all the legitimate operators. It also dissuades the illegitimate operators from coming into our state.

I already mentioned that there have only been 23 Fair Work Ombudsman audit campaigns in this state in 10 years; that means slightly more than two a year. There is not a lot of federal oversight of the workplace in South Australia. Repealing that legislation and stopping it I just don't think is the right signal to send. I think it encourages, as I said, nefarious actors to operate in this state when they otherwise wouldn't be.

110 The Hon. C. BONAROS: And it allows the phoenix schemes effectively to just continue unmonitored; is that a fair comment?

Mr CAVANOUGH: Effectively, I think it certainly makes it easier, having the labour hire licensing regime, yes.

111 The Hon. C. BONAROS: I think that in finding 6 you pointed to the drop in the number of audits since 2010, and I note that that's directly relevant probably to the reduction in funding. Do we have statistics about the audit results for the decades prior to that that you point to in your paper?

Mr CAVANOUGH: Not immediately prior. We looked specifically at the Fair Work Ombudsman audit campaigns. We didn't look at the preceding entity before that, which I can't recall off the top of my head. What we did see was that back in previous decades, in the 1970s, 1980s and early 1990s, the relevant substitutes for the Fair Work Ombudsman were actually engaged in far more auditing. There's simply less workplace auditing going on now than there, frankly, ever has been, and this is real numbers; this isn't as a percentage. The actual crude numbers are less than they ever have been.

112 The Hon. C. BONAROS: I just want to ask one more if I can. At the outset, you talked about the worst results that you can have in this instance in terms of underpayment and struggling financially compounded by wage theft. Do you know of any cases specifically where suicide has been the result of financial struggle?

Mr CAVANOUGH: I can't speak to any specific cases.

113 The Hon. C. BONAROS: But it's something you've heard along the way?

Mr CAVANOUGH: That's a consequence of financial stress. As I said, I don't have a specific case study on that, and I think other organisations more directly working with workers are better placed to speak to that. On a broader level, financial stress is a key determinant of things like suicide, depression, mental health. They have their own externalities, their own costs, that burden—health systems and the like—so anything that we can do to eliminate that point of stress in people's lives is very helpful.

114 The Hon. E.S. BOURKE: Just to touch again on the importance of providing collaboration between government and unions, I guess also we have seen recently in state parliament a requirement of having a union representative on the construction training boards removed as well.

Going from the information you are providing, the message about wage theft is just not getting through to people and necessarily people aren't understanding what wage theft even is. Is that what you are finding? If we keep removing that representation from boards, I can't imagine that this is going to ever evaporate overnight if there is no representation for the workers there to highlight what is going on?

Mr CAVANOUGH: I think there is a general lack of education among certain high-risk groups about what they are entitled to, including representation and also their rights through the Fair Work Ombudsman and other bodies. I don't really understand the political posturing about things like unions and everything because the reality is that there are only a couple of hundred inspectors who can actually go into workplaces and do this around the country.

There are peak bodies related to industries and certain employer groups that have the capacity and have the close relationship with businesses that can help them comply with their obligations because often these things are mistakes and they should seek help from their own peak bodies. But, in the same regard, so should employees be able to seek as much help as they can from, effectively, their peak bodies, which are the unions. The constant removal of that representation does have a negative effect on an individual's capacity to seek their entitlements. So, yes, I think that's alarming.

115 The Hon. E.S. BOURKE: I think you mentioned also before \$270 million; was that in superannuation?

Mr CAVANOUGH: Yes.

116 The Hon. E.S. BOURKE: Has anyone ever looked at them long-term impact of that? If \$270 million is being removed from those individuals at the current time, I guess by the time retirement comes around there will be a huge social and economic impact for those workers as well.

Mr CAVANOUGH: We looked at that briefly and we did some simple estimates on the compounding nature of that \$270 million. You are right: year on year, that ends up accruing to this multibillion-dollar cost to South Australian retirees in the future. I think that's actually one of the more insidious forms of wage theft because it's not just adding to financial pressure now; it's actually kicking the can way down the road.

We are already reaching the point in Australia where there is a constant struggle to finance the aged pension and things like that. Superannuation is so important in taking off the burden from the financial government to pay for these things. Every dollar that is taken out of superannuation today intentionally is stealing from workers and retirees in the decades to come, and that has its own monumental costs that impact us down the line. We need to do as much as we can right now to actually stop this happening, otherwise we are going to see this explosion of people not having what they are expecting in decades to come.

117 The Hon. C. BONAROS: On from the question Ms Bourke just asked, isn't it really the case, though, that irrespective of what audits are going on or whether unions are going into workplaces or not, in the current climate employers know probably that they can get away with what they are doing because there aren't regular audits. I think you said that 40 per cent of employers who have offended are going to reoffend or are likely to reoffend, so the chances of them actually getting called up for their actions are so slim that they are just continuing to flout the law because they can, effectively, because are not going to get caught; is that a fair assessment?

Mr CAVANOUGH: I said at the outset, and what we have to be honest about, that the vast majority of people engaged in this simply will never get caught under the current regime. The vast majority of those who do get caught will never be forced to pay back any money, and zero per cent of them that get caught will ever face any criminal charges because it's not a criminal charge.

118 The Hon. C. BONAROS: So there's no incentive there really for them to do otherwise, is there?

Mr CAVANOUGH: There is very little incentive, and we are seeing that the fines are so minimal. I mentioned before the case of a fast-food franchisee. One of his staff was \$16,000 underpaid. He received a \$60,000 fine after being found guilty; \$60,000 is a lot of money, but for a major fast-food franchise it's not a considerable sum. There is no huge disincentive, and that's why one of the key recommendations and what this conversation has effectively moved to—and this is almost acceptable from all sides of politics and an increasing number of employer groups as well—is that we need to criminalise this sort of behaviour, this sort of continual behaviour. We don't necessarily have the capacity in our institutions to audit every single business and we don't really want a system where we are doing that every day. We just need to set clear examples that if you do get caught you are going to get in serious trouble.

119 The Hon. T.A. FRANKS: I had a supplementary that was going to go back to that \$16,000 worth of wage theft for that fast-food worker and the \$60,000 fine. How long did it take that worker to go through that process? How many other people does that fast-food outlet employ, and how likely was it, in fact, that \$60,000 was far less than they were taking from everyone else?

Mr CAVANOUGH: To that specific case, I am not sure how long that individual took to get his money back. It does take months, though; in a good case, it will take months. We released some work on this just related to that. We released, basically, our report that we submitted here as a public document recently. I was on radio discussing it and we had talkback callers calling up and explaining some of their situations with the Fair Work Ombudsman.

As I said earlier, the Fair Work Ombudsman is very professional, doing as much as they can. It just takes months and months and months. The dilemma for an employee is effectively, 'Do I go and do the right thing and get my boss on the hook for having done the wrong thing, potentially taking months and potentially losing my job in the interim?' Certainly, if you're a casual worker and you rely on regular shifts, you might have your hours cut down, you might not get Sunday shifts and get less money and the like. This is a decision that they have to make.

The process is very lengthy. It's certainly going to vary case to case, but it does take a long time to get any money back. At the end of the day, there's no additional money received by these employees beyond what they were actually originally entitled to, so they are very rarely getting compensated for the time that they put into going through the Fair Work Ombudsman. In terms of the number of people employed by that particular franchise at that store, I do not have an idea, but there certainly would be thousands employed by that business overall.

120 The Hon. E.S. BOURKE: And it is also a huge step for a worker to go through that process for future job opportunities as well—going for a job interview and they ask, 'Where were you working before applying for this job?' and not having a reference to follow.

Mr CAVANOUGH: The system benefits those who are strong advocates for their own rights as individuals. That is actually, in itself, a bit of an inequality in the system. You're only likely to ever get what you were entitled to if you are, frankly, a savvy advocate and can navigate a complicated system. Yes, it's very difficult for individuals to go through the Fair Work Ombudsman.

121 The Hon. C. BONAROS: Regarding the analysis that you did of wage theft across Australia in terms of identifying the industries, across the board—I might be reading this wrong—I think hospitality, restaurants, cafes and catering, pretty much came out the worst in terms of wage theft, but that's not specific to South Australia either. I am thinking also of the regional work that we do here as well. What would be our worst? Do we know that?

Mr CAVANOUGH: It would be similar. Hospitality, agriculture and horticulture are effectively the worst offenders in this. That goes to the nature of the work as well. We just had the Fringe season. A lot of that sort of work is very brief. It might be a few shifts here and there. Audits of those types of events often demonstrate the highest rates of noncompliance. One of the big problems, of course, is the migrant worker issue. There was a report, the migrant worker survey, by Professor Alan Fels at the federal level that identified that at least 150,000—I think was 145,000—migrant workers around the country were likely being underpaid routinely. That is one of the high-offending industries as well, absolutely.

122 The Hon. C. BONAROS: That's compounded again by people who travel and do seasonal work as well—visa holders, effectively.

Mr CAVANOUGH: There are a few determinants of it, effectively. One is, yes, the fact that people are visa holders. They are worried that if they raise alarms they are basically going to have their visa rescinded; there is that fear. There is also geographic isolation. If you're out quite a long way from a metropolitan area and you don't know the phone number or your rights, or you have poor English skills, it's very difficult to get work, and also just that temporary nature of the work and, frankly, labour hire licencing. I have heard this anecdotally quite a bit.

Particularly some fruit picking will come on very quick and you will need 30 or 40 staff within a matter of days. There are entities that work in those regions that go around and can provide that quickly to farmers who need the labour, and there are big labour shortfalls in those regions. Often the workers associated with those labour hire firms are subject to underpayment.

123 The Hon. E.S. BOURKE: Is there a particular age group that is most vulnerable to wage theft?

Mr CAVANOUGH: Younger workers are typically the most vulnerable, I think for a few reasons. Younger workers occupy higher percentages of these industries where we see the highest rates of wage theft. In hospitality in particular, there are a lot of younger workers. There has been detailed work, a survey of work, on younger workers being impacted, and there is an understanding that many just do not know their full entitlements.

When I was 16, 17 or 18 years old, I didn't know the ins and outs of Australian labour law. I didn't know what my specific award was, necessarily, going on day one into a job. There are people who do take advantage of that and younger workers are particularly prone to it. In those industries as well, there are higher percentages of women working, particularly in casual work, in things like hospitality, effectively. They are particularly subject to this as well.

124 The CHAIRPERSON: I have a couple of further questions. We are seeing in some of the submissions that wage theft appears to be being used as a cost-saving measure, which

becomes part of that business model. Can you explain why this may be occurring? Also, from your research, have you found that both businesses and employers have a clear understanding of what wage theft is?

Mr CAVANOUGH: On the second point, I think most people are getting a pretty good understanding of what wage theft is now. It has become part of our lexicon. We looked at media coverage of wage theft a few years ago, and it barely raised a mention. Now we are seeing hundreds of stories a year on wage theft. People know what this is, generally. Businesses certainly know what this is, and they certainly know if they are deliberately underpaying people that they are doing something wrong.

In terms of the business model, many businesses are engaged in this intentionally. There are many that are underpaying and inadvertently doing that, and that is still a big problem. The laws that we can create can acknowledge that, but there are certainly going to be businesses that are engaging in this deliberately as a business model, for many of these reasons that we were talking about.

It is almost certain that you're not going to get caught for this, unless you're doing it egregiously, unless you're one of the worst offenders, like the famous 7-Eleven case, for example, of people getting paid just several dollars an hour. That's at the absolute worst end of this, but if you're a business that is saving smaller amounts of money through engaging in this as a form of business practice then yes, I think that can be a business model and there is an acknowledgement that you probably won't get caught.

125 The CHAIRPERSON: Mr Cavanough, you also mentioned in your opening statement that the McKell Institute has produced a further report looking at strategies for dealing with wage theft. Are you able to make that report available to this committee?

Mr CAVANOUGH: I am absolutely happy to submit that.

126 The CHAIRPERSON: That would be useful. We may call you back again.

Mr CAVANOUGH: Wonderful.

127 The CHAIRPERSON: Thank you very much for your time today. As I said, a transcript of your evidence will be forwarded to you for you to consider and to make any clerical corrections.

Mr CAVANOUGH: Thank you very much.

THE WITNESS WITHDREW