



Hon Bill Johnston

Minister for Mines & Petroleum; Energy; Industrial Relations

Inquiry to examine the

Wage Theft in Western Australia

Submitted by

The Independent Education Union of Australia WA Branch

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About the Independent Education Union of Australia WA Branch

The **Independent Education Union of Western Australia (IEUA WA Branch)** represents the professional interests and industrial and workplace health and safety concerns of teachers and support staff in non-government schools, early education and care services, post-compulsory education and other non-government educational institutions across metropolitan and regional and remote Western Australia.

The IEUA WA Branch has a membership of 5,000 teachers and support staff in Western Australia.

Members work in a diverse range of schools including Catholic, Islamic, Anglican, Jewish, Steiner, Lutheran, Montessori, other faith-based, community and non-denominational independent schools.

These schools range from very large schools with significant resources to extremely small rural schools with very limited resources

While the majority of members of the IEUA WA Branch are teachers, a significant proportion of members are workers engaged as learning support assistants, administrative staff, central office staff, lab and IT technicians, senior staff, boarding house staff, psychologists and social workers.

Additionally, the IEUA WA Branch represents teachers in Early Childhood Education and post-secondary private education and training.

The **Independent Education Union of Australia (IEU)** membership nationally has doubled in size over the last ten years. The IEU is a significant national union with more than 75,000 members around Australia.

This is our submission on behalf of members of the IEUA WA Branch.

The Independent Education Union of Australia WA Branch (IEUA WA Branch) is pleased to have the opportunity to make a submission with regard to wage theft in Western Australia.

On behalf of our members, we strive daily in order to ensure that our members receive fair wages and entitlements and that their employers do not deny them their legal pay and entitlements.

Unfortunately the IEU all too regularly represents members whose non-government education employer has engaged in wage theft.

We will provide examples in our submission.

Terms of Reference (TOR)

1. Whether there is evidence of wage theft occurring in Western Australia, and the various forms wage theft may take

The IEU frequently represents members where there is evidence of wage theft occurring.

At times this evidence will be represented in the form of applications to the WA Industrial Relations Commission in the form of an industrial dispute.

Examples of wage theft experienced by our members are:

Teachers unrecognised and unpaid overtime

Teachers endure ever increasing teaching and non-instructional workloads without financial compensation or time-in-lieu compensation eg:

- Teachers being expected and directed to participate in unlimited extra and co-curricular work for the school above and beyond their usual teaching, student contact time, planning and assessment.
- Teachers being expected to undertake the majority of their preparation, planning, assessment and marking time outside their theoretical hours of work.
- Teachers being expected to read and respond to emails from parents and in some cases school management, regarding their child at all hours of the day and week including during the evening, weekends, term holidays and annual leave.
- Boarding house staff being rostered to work any hours of the day and week without penalty rates
- Boarding house staff being expected to be on duty during unpaid break times to be available to attend to students at all hours of the night and weekends.
- Boarding house staff not getting appropriate paid breaks during shifts and not getting paid compensation where breaks between shifts are not granted/taken.
- Administration staff being required to attend for duty prior to their official start time and staying back after their official finishing time without payment for the additional time.
- Education assistants being expected to accompany students on school camps to supervise and care for them therefore working many additional hours without any additional payment.
- Education assistants being rostered on for yard duty during their unpaid meal breaks.
- Support staff being instructed to work additional hours and told by their employer that they must take time off in lieu as if it isn't an option to receive payment with penalty rates.

- Support staff after being instructed by their employer to work additional hours and take time in lieu instead of payment with penalty rates, not being paid the outstanding additional hours on termination of employment.
- Teaching and support staff being systematically and individually under-classified for the qualifications, skills and experience they possess

2. What are the reasons wage theft is occurring, including whether it has become the business model for some organisations

The IEU believes that some of the practices in certain non-government schools are deliberate and possibly a business model for some employers.

For example we aware that some Business Managers/Bursars dictate to certain staff, most often grounds persons and boarding houses staff that overtime is not payable and that they must take time in lieu of the overtime payment.

Principals in many schools place heavy demands on teachers to not only carry out their curriculum and face to face teaching time but all of the additional workloads such as extra and co-curriculum, camps, sporting coaching and practice, trips interstate and overseas representing their school etc.

Teachers who do not comply will be disciplined and their ongoing employment will be under threat.

3. What is the impact of wage theft on workers, businesses which are compliant with employment laws, and the Western Australian community and economy

For workers, wage theft impacts on their financial capacity to earn fair decent salaries to support themselves and their families.

This in turn impacts on the Western Australian economy due to workers not being able to afford to spend discretionary income on goods and services including travel within Western Australia, going to restaurants, home renovations and the like.

When wage theft is the result of unreasonable additional unpaid hours, this is likely to A. contribute to the poor health of the worker which will have impacts on their family, social and working life and B. result in the worker being unavailable to be active in their community.

There is an impact on the students when teachers are is not able to function to the best of their ability due to health issues and exhaustion caused by over work.

In relation to the impact on school/businesses as a result of wage theft, clearly businesses who do the right thing by their employees by paying the correct salaries, allowances and conditions are at a disadvantage to a school/ business that does engage in wage theft.

This will have an impact on what the school/business can afford to pay staff and what resources they can provide to the students.

4. Whether wage theft is more prevalent in particular industries, occupations, forms of employment/engagement or parts of the State

Wage theft in non-government Schools is prevalent in most schools amongst both teaching and support staff for reasons raised in our submission in TOR 1.

As for the forms of employment/engagement, a big issue in non-government Schools is that of invalid temporary and fixed term contracts.

Far too many teachers and support staff members are placed on rolling temporary or fixed term contracts albeit when it is clear that the position is ongoing and permanent.

This appears to be designed to dissuade workers from questioning their non-payment or underpayment of wages.

5. Whether the current State and federal regulatory framework for dealing with wage theft is effective in combatting wage theft and supporting affected workers

The IEU believes that the current system to enforce matters of wage theft is too complicated and cumbersome.

For example a dispute over say an underpayment brought to the WA Industrial Relations Commission as a dispute under section 44 may run into jurisdictional barriers.

There is the option of running a determination application under Section 46 for and underpayment of salary or incorrect classification that may also run into interpretational and/or jurisdictional barriers.

Finally with the other option of a complaint at the Magistrates Court, this is a cumbersome, complicated and lengthy process to be able to prosecute an employer for wage theft.

The IEU proposes that greater powers be given to the WA Industrial Relations Commissioner under section 44 or 46 to be able to deal with wage theft matters in a simpler and more efficient way so as to avoid potential jurisdictional matters and the complex Magistrate's process.

6. Whether new laws should be introduced in Western Australia to address wage theft, and if so, whether wage theft should be a criminal offence

The IEU supports new laws being introduced in Western Australia to address wage theft.

The IEU considers that wage theft should be deemed a criminal offence.

Specific Examples of Wage Theft

Example 1

An IEU member working at a non-government School was engaged as a Groundsperson. On engagement the Principal advised the staff member that there was no money in the Schools' budget to pay overtime for any additional hours he worked. He was directed to take time off in lieu of any payments for any additional hours that should have been paid including at penalty rates. Over a period of about 2 years,

the member amassed a bank of approximately 100 hours of time in lieu. The member suffered a workplace injury and as a result had to leave the employer due to a Workers Compensation settlement. At the time of the settlement the member had about 100 hours of time in lieu accrued. These hours should have been paid out with the applicable penalty rates applied. The employer refused to pay out any of the 100 hours owing.

Example 2

An IEU teacher member working at an Independent School in a regional country town has an issue regarding under classification. The member is a teacher from overseas who has worked as a teacher in Australian Schools for in excess of 12 years. The teacher had his overseas qualifications recognised by Australian authorities as being the equivalent of two degrees and one diploma. Whilst working interstate both State Government and Independent Schools he taught at recognised his equivalent teaching qualifications. He was paid at the top of the Enterprise Agreement levels according to his qualifications and teaching experience. The member commenced employment his current school in Regional Western Australia around three years ago. The Principal of the School refuses to recognise the members' qualifications from overseas that were converted to Australian Qualifications and his teaching experience from interstate. As a result our member has been under classified by five levels. Under his Enterprise Agreement, based on qualifications and experience, he should have been placed on Step 13 from commencement, instead he was placed on a Step 7 salary rate. Our member is owed tens of thousands of dollars in back pay due to wage theft.

Example 3

An IEU member engaged as a I/T Technician has an issue regarding under classification. She works at an Independent School in the metro area. Under her Enterprise Agreement and according to her duties and size of the School, she should be on a Level 7/6 I/T Support Staff salary. The School has our member on a Level 2, 2.1 Salary rate. This current rate is approximately \$20,000 per annum less than what she should be paid.

Example 4

This example relates to a teacher IEU member at an Independent School. The teacher had a daughter attending the School that our member taught at. The teacher member was heavily involved in extra and co-curricular activities in addition to her usual ordinary teacher workload. She was involved in sport and debating activities. The member's daughter started having difficulties with her subject at school. When her mother found out about these difficulties she asked her daughter why did you not come to me sooner for help. Her daughter replied "well you do this on this day and that on that day the only time you had free was Sunday morning so there was no time to approach you" This is a clear example of wage theft (additional hours without pay) that has had a significant effect on the member and her daughter.

Example 5

This example involves a group of Religious Independent Schools. Under the Agreement it was at the employer's direction on how a support staff member was compensated for any additional hours of work. Under the Agreement the employer had to approve any additional hours but the only option for the employees was that they would be granted overtime in the form of time in lieu. This time in lieu was based on time for time not the penalty rate component of time in lieu. The IEU opposed the Agreement

being approved by the Fair Work Commission based on our concerns about the non-payment option for an employee working additional hours. The lack of overtime choice did not comply with terms of the

Parent Award and as a result of our challenge, the Commissioner made the employer commit to undertakings that the employee will be paid penalty rates for any additional hours. Further it will be at the employee's election whether he/she elects to time in lieu of payment for additional hours.

We thank you for the opportunity to provide our submission on behalf of IEU members, and look forward to receiving the report and recommendations on the outcomes of this Inquiry.

Yours sincerely,



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General Secretary

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Yours sincerely

A handwritten signature in black ink that reads 'Angela Briant'.

General Secretary
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