



Submission to Senate Inquiry into unlawful underpayment of employees' remuneration

**University of Melbourne Graduate
Student Association**

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Introduction

Universities in Australia are responsible for producing world-leading research, training the next generation of professionals and researchers, and contributing to the economy by providing education as a service export. However, much of the important teaching and research performed in universities is conducted by passionate and skilled individuals who are illegally underpaid for their work. Even at the University of Melbourne, the nation's top-ranked university in the prestigious QS World University Rankings, casual staff and graduate researchers are victims of wage theft. Students are also frequently illegally underpaid in other industries such as hospitality and retail, in which they often work alongside their studies.

The Graduate Student Association (GSA) is the independent representative organisation for all graduate coursework and research students at the University of Melbourne. We are led by an elected Council of 15 graduate students, and on behalf of over 36,000 constituents we represent graduate student interests to the University and wider community, provide facilities and services, deliver events and activities to promote graduate student community and academic excellence, and support over 130 affiliated graduate student groups.

GSA's vision is for a cohesive community that actively empowers graduate students' experience and excellence.

Our mission is to contribute to the emotional health and wellbeing of graduate students and support their striving for academic excellence and transition to work.

We welcome the opportunity to provide a submission to the Senate Economics Reference Committee Inquiry into unlawful underpayment of employees' remuneration. In this submission, we illuminate experiences of wage theft among staff and students in our universities. We make the following recommendations:

Recommendation 1: That the Government pays living wage stipends to all graduate researchers.

Recommendation 2: That the Research Training Program stipend is raised to minimum wage.

Recommendation 3: That superannuation and other employment entitlements are paid to recipients of Research Training Program stipends.

Recommendation 4: That the Government legislates that international students breaching visa conditions are not at risk of deportation or other penalties after reporting wage theft.

Recommendation 5: That the Government continues to resource the Fair Work Ombudsman to undertake education initiatives on international students' workplace rights.

Recommendation 6: That the Fair Work Ombudsman conducts extensive, proactive investigations of industries with high rates of wage theft, penalising dodgy employers and assisting victims to recover unpaid wages (Strategic Enforcement Model).

Recommendation 7: That the Fair Work Ombudsman prioritises the investigation of employers engaging students in illegal unpaid internships.

Paying graduate researchers for their work

Graduate research students - those in a Master's by Research or Doctor of Philosophy program - have working conditions which closely resemble those of employees. Graduate researchers, particularly in science, engineering, and medicine, are typically expected to attend their laboratory or office during and often beyond standard full-time working hours. They are responsible for tasks such as training junior colleagues, assisting with supervisors' experiments, and laboratory cleaning. These tasks are of limited value to the graduate researchers' project development and progression towards graduation. Students in scientific and technical disciplines typically have little autonomy over their research direction. Graduate researchers in this position have the responsibilities and working conditions of an employee, but are excluded from rights as an employee. Many are undertaking this work entirely for free.

The most common source of income for a graduate researcher is a Government stipend through the Research Training Programme (RTP). It is a common misconception that all PhD students receive such funding. Each year, there are almost three times as many commencing domestic research students as there are RTP stipends¹. At the University of Melbourne,

¹ Council of Australian Postgraduate Associations 2018, Income support for domestic postgraduates in Australia: Discussion paper, accessed from <http://www.capa.edu.au/wp-content/uploads/2018/10/Income-support-discussion-paper-October-2018.docx>

approximately 350 RTP stipends are to be awarded in 2020². However, each year one thousand new graduate researchers commence at the University of Melbourne³, meaning only one in three holds an RTP stipend, with an unknown number of commencing graduate researchers holding a different stipend through industry funding, Australian Research Council grants, or National Health and Medical Research Council grants.

The Government would need to contribute an additional \$1.6 Billion per year in order to pay all domestic graduate researchers a base-rate stipend⁴. We therefore contend that the Government is engaging in \$1.6 Billion per year of wage theft against domestic graduate researchers.

Following the recommendation of the Council of Australian Postgraduate Associations in their submission to this inquiry⁵, we urge the Government to make stipends available to all graduate researchers.

Recommendation 1: That the Government pays living wage stipends to all graduate researchers.

For those who are fortunate enough to receive a stipend, it is paid at a rate below minimum wage. The 2020 base RTP stipend rate is just \$28,092⁶. Most universities pay stipends at the base rate; they are permitted to pay up to \$43,885 per year, but a higher rate of pay means that they are able to award stipends to fewer graduate researchers⁷. At the University of Melbourne, the rate is \$31,200 per year⁸. This is well below the legal minimum full-time wage of \$38,521⁹. Furthermore, superannuation is not paid to RTP stipend recipients. We allege that these are further instances of wage theft by the Federal Government against graduate researchers. We concur with the Council of

² University of Melbourne n.d., Research training program scholarship, accessed from <https://scholarships.unimelb.edu.au/awards/research-training-program-scholarship>

³ Department of Education, uCube - higher education data cube, accessed from <http://highereducationstatistics.education.gov.au/>

⁴ Council of Australian Postgraduate Associations 2019, 2020-21 pre-budget submission, accessed from <http://www.capa.edu.au/wp-content/uploads/2019/12/Pre-budget-submission-2021-final.docx>

⁵ Council of Australian Postgraduate Associations 2020, Submission to Senate Standing Committees on Economics: Unlawful Underpayment of Employees' Remuneration

⁶ Department of Education 2019, Research training program, accessed from <https://www.education.gov.au/research-training-program>

⁷ Ibid.

⁸ University of Melbourne n.d., Research training program scholarship, accessed from <https://scholarships.unimelb.edu.au/awards/research-training-program-scholarship>

⁹ Fair Work Ombudsman 2018, Minimum wages, accessed from <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/minimum-wages#current-national-minimum-wage>

Australian Postgraduate Associations' recommendation to raise the stipend to at least minimum wage¹⁰.

Recommendation 2: That the Research Training Program stipend is raised to minimum wage.

Recommendation 3: That superannuation and other employment entitlements are paid to recipients of Research Training Program stipends.

Payment for all work by sessional university employees

Two-thirds of university staff are employed on a sessional, casual, or part-time basis¹¹. Many of these are also postgraduate students, particularly graduate research students, who undertake teaching or research work alongside their studies. These sessional and casual staff are vulnerable to underpayment. Concerning practices include:

- piece rates for assignment marking;
- inadequate paid hours allocated for marking;
- inadequate paid hours allocated for preparation;
- not paying tutors to attend lectures, which they must do to be adequately prepared for teaching their tutorials;
- not paying for time spent on student consultation; and
- misclassification of casual academics at a lower rate of pay.

Last year, the NTEU University of Melbourne branch launched a wage theft campaign, endorsed by GSA, to collect evidence of casual academics, including graduate researchers, impacted by underpayment. The main complaints included some of the issues noted above.

Casual or sessional academics may be dissuaded from pursuing wage claims as this can impact their likelihood of being hired for subsequent casual or contract work at the university. This is articulated by an anonymous account provided by a long-term casual/sessional academic at the University of Melbourne:

¹⁰ Council of Australian Postgraduate Associations 2020, Submission to Senate Standing Committees on Economics: Unlawful Underpayment of Employees' Remuneration

¹¹ National Tertiary Education Union 2018, The flood of insecure employment at Australian universities, accessed from <https://www.nteu.org.au/library/download/id/8988>

All of these practices also drew on making tutors feel they were lucky to be given work, and therefore also powerless to speak out. They are also manipulative practices because tutors generally care about their students, and want them to do well. Being hired next semester also depends on positive student feedback in the form of Student Evaluation Surveys. Tutors therefore regularly spend unpaid time engaging and helping students, and deepening their own knowledge of the subject area to ensure they received good feedback.

As these practices are already illegal, we suggest that the Government dedicates more resources to the enforcement of employment laws.

We agree with the National Tertiary Education Union's recommendation, in their submission to this Inquiry, that universities should be required to report data the number of casual and contract staff.

Defending international students' workplace rights

The number of international students coming to Australia increases year on year, with many undertaking paid work alongside their studies. The issue of wage theft among international students is therefore an issue of growing concern, as reflected in recent awareness-raising exercises by the Fair Work Ombudsman¹². International students are sequestered into a small range of jobs in low-paid industries such as hospitality, retail, and cleaning services¹³ - industries which are rife with illegal underpayment and superannuation theft. International students in particular are more vulnerable to wage theft than local students due to a conglomeration of factors including poverty, visa laws, and cultural issues. In a survey conducted for Fair Work Australia, researchers found that two in five international students were being paid less than \$17 per hour, concluding that a significant number of international students are being illegally underpaid¹⁴.

¹² Fair Work Ombudsman 2017, New strategy to raise international students' awareness of workplace rights, accessed from <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/september-2017/20170925-international-students-release>

¹³ Nyland, C, Forbes-Mewett, H, Marginson, S, Ramia, G, Sawir, E, and Smith, S 2009, International student-workers in Australia: A new vulnerable workforce, *Journal of Education and Work*, vol. 22, no. 1, pp. 1 - 14

¹⁴ Reilly, A, Howe, J, Berg, L, Farbenblum, B, and Tan, G 2017, International students and the Fair Work Ombudsman, Fair Work Ombudsman, accessed from <https://www.fairwork.gov.au/ArticleDocuments/1160/International-students-and-the-fair-work-ombudsman-report.pdf.aspx>

It is common for international students to live in poverty or financial distress. According to the Universities Australia student finances survey, half of international undergraduate students and two in five international postgraduate coursework students have more expenses than income¹⁵. This results in one in seven international undergraduate students, and one in ten international postgraduate students, regularly forgoing food or other necessities because they cannot afford the expense¹⁶. International students are unable to access support through the social services system, and welfare services provided by universities are inadequate, with most supplying only short-term loans to those experiencing financial emergencies¹⁷.

It is often assumed that international students do not commonly experience financial struggles, because they must demonstrate that they have sufficient funds to sustain themselves during their studies prior to arriving in Australia. However, the Universities Australia survey and students' own stories indicate otherwise. This is in part due to unregulated tuition fees; a student may arrive with seemingly enough money, only to run out due to paying for unexpected tuition fee increases.

International students experiencing financial struggles have little option but to work illegally. Under student visa conditions, international students are limited to up to forty paid working hours each fortnight. Students requiring additional income may seek under-the-table employment. This unregulated, undocumented employment means that international students are an easy target for wage theft and other forms of illegal workplace exploitation. The requirement to accept underpayment to secure employment is expressed by an anonymous international student from the University of Melbourne:

My experience is that when I apply for a job, I know how low my salary is, and I still apply for this job. If the boss is not too bad for you, I will feel that I should not stab the boss behind him, and what will colleagues think of you... low pay is common in Chinese stores, if you don't do it, a lot of others will be willing to do the low paid job.

An account from another student evidences the use of unpaid trials to extract free labour from international students:

¹⁵ Universities Australia 2018, Universities Australia student finances survey, accessed from, <https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/06/180713-2017-UA-Student-Finance-Survey-Report.pdf>

¹⁶ Ibid.

¹⁷ Abrahams, N 2019, April 3, Degree in poverty is not a rite of passage, The Australian, accessed from <https://www.theaustralian.com.au/higher-education/degree-in-poverty-is-not-a-rite-of-passage/news-story/cc7eff7c242314c417b153c5a2e25ee4>

I'm a graduate student studying at UniMelb. I've been working as a part-time administrative officer for over a year at a Chinese media company. The underpayment can be seen easily in the Chinese media companies in Melbourne as far as I know. Take myself as an example, I was told the first one to three months is trial so I won't get paid during the trial. I was eager for working experience in Melbourne so I accepted that and after the first two months, I went for negotiation with my boss about the salary. My wage is much lower than the minimum wage in Australia (which hourly rate is \$19.49). Giving a rough calculation, the total loss can be at least \$5160.

Compounding the issue of underpayment is international students' understandings of Australian law. International students may be less aware of their workplace rights than citizens, or where they are aware, feel less empowered to exercise their rights. While international students are often aware of minimum wage, they are not cognizant of other rights such as award rates and penalty rates¹⁸. Furthermore, within their own communities, international students advise each other on acceptable rates of underpayment, thus normalising the expectation of wage theft¹⁹. This community acceptance of wage theft is noted by another anonymous international student from the University of Melbourne:

I have worked in many restaurants, delivery and grocery stores. The working salary level is about 12-15AUD/H. But some people told me that some of them only work for \$ 10 an hour.

Now, I got a good job and my job gives me legal wages. But I still know that the wages of many Chinese students are still below the legal level. They are being exploited, and the government's supervision is very minimal. This phenomenon is everywhere. Even the salary for Chinese students at the University of Melbourne campus restaurant is only 12\$.

Because it is difficult for international students to find employment, it is common for them not to contact the Fair Work Ombudsman about underpayment for fear of being fired²⁰. Moreover, those who have worked more hours than is allowed by their visa conditions may be fearful of

¹⁸ Clibborn, S 2018, Multiple frames of reference: Why international student workers in Australia tolerate underpayment, *Economic and Industrial Democracy*, epub ahead of print

¹⁹ Ibid.

²⁰ Reilly, A, Howe, J, Berg, L, Farbenblum, B, and Tan, G 2017, International students and the Fair Work Ombudsman, Fair Work Ombudsman, accessed from <https://www.fairwork.gov.au/ArticleDocuments/1160/International-students-and-the-fair-work-ombudsman-report.pdf.aspx>

deportation, which also would result in being unable to complete their studies, if they bring this to the attention of a Government agency. While current practice is for the Fair Work Ombudsman not to report to the Department of Home Affairs, this must be legislated to give victims greater certainty in this process. Employers may also threaten to report their workers to the Department of Home Affairs²¹. Following the recommendation of the McKell Institute²², we encourage the Government to implement formal, legal protection for international student victims of wage theft, such that they cannot be penalised for working more hours than is allowed.

Recommendation 4: That the Government legislates that international students breaching visa conditions are not at risk of deportation or other penalties after reporting wage theft.

Recommendation 5: That the Government continues to resource the Fair Work Ombudsman to undertake education initiatives on international students' workplace rights.

Ending wage theft in industries with student workers

Both domestic and international students are at risk of wage theft in the industries in which they commonly work casually alongside their studies. This is evidenced by recent reports on young workers (usually categorised as those under 25), noting that it is common for this age group to be engaged in tertiary education. In Victoria, over half of 18 - 24 years olds are enrolled in study²³. Young workers are at additional risk of wage theft due to scarcity of jobs for this demographic, high rates of casualisation, limited awareness of workplace rights, and less prevalent union membership²⁴.

Wage theft is the norm in retail, hospitality and fast food, and other industries in which students often work. A large survey of Victorian workers aged 15 - 30

²¹ Berg, L, and Farbenblum, B 2017, Wage theft in Australia: Findings of the national temporary migrant work survey, Migrant Worker Justice Initiative

²² Cavanough, E, and Blain, L 2019, Ending wage theft: Eradicating underpayment in the Australian workforce, McKell Institute Victoria, accessed from <https://mckellinstitute.org.au/app/uploads/McKell-Ending-Wage-Theft.pdf>

²³ Australian Bureau of Statistics 2019, 6227.0 - Education and work Australia May 2019, accessed from <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6227.0May%202019>

²⁴ Cavanough, E, and Blain, L 2019, Ending wage theft: Eradicating underpayment in the Australian workforce, McKell Institute Victoria, accessed from <https://mckellinstitute.org.au/app/uploads/McKell-Ending-Wage-Theft.pdf>

by the Young Workers Centre found that one in five was being paid less than minimum wage, half had been made to work unpaid hours, and less than half of those entitled to penalty rates (such as for evening or weekend work) actually receive them²⁵. Concerningly, they found that more than half of the workers receiving less than minimum wage had no idea that they were being underpaid²⁶. A Hospo Voice survey of Victorian hospitality workers found that three quarters were paid below the award rate, and half were made to work unpaid overtime²⁷.

Wage theft in industries with a younger workforce is systemic, embedded through corner-cutting in small and large businesses alike. According to the Queensland Young Workers Hub, when large businesses fail to have a dedicated payroll officer, wage theft becomes part of regular business operations as penalty rates and other entitlements are ignored when calculating payments²⁸. They also identified the failure of employers to provide payslips as eroding workers' power to identify the presence and extent of underpayment that they experience.

Recommendation 6: That the Fair Work Ombudsman conducts extensive, proactive investigations of industries with high rates of wage theft, penalising dodgy employers and assisting victims to recover unpaid wages.

Enforcing the law on illegitimate internships

Unpaid internships are a further opportunity for the exploitation of students. Internships ostensibly provide students with valuable industry experience to enable them to build their careers and obtain paid employment post-graduation. In order for an unpaid internship arrangement to be legal, it must meet certain conditions: the person cannot be doing 'productive' work, the main benefit should be for the person doing the internship, and it must be a

²⁵ Young Workers Centre 2017, Young workers snapshot: The great wage rip-off, accessed from <http://www.youngworkers.org.au/research>

²⁶ Ibid.

²⁷ Hospo Voice 2017, Hospo Wage Theft Investigation 2017, accessed from https://d3n8a8pro7vhmx.cloudfront.net/wearecrown/pages/1842/attachments/original/1511226048/Hospo_Wage_Theft_Investigation_Fact_Sheet.pdf?1511226048

²⁸ Young Workers Hub 2018, Wage theft: Reality for young workers, Inquiry into wage theft in Queensland, submission 019, accessed from <https://www.parliament.qld.gov.au/documents/committees/EESBC/2018/Wagetheft/submissions/019.pdf>

meaningful learning experience²⁹. While internships can be a worthy opportunity, we are concerned that some businesses illegitimately use the idea of internships to increase their own profits, with limited educational value to the student.

Internships are generally unpaid and may even have an application fee for the student. Unpaid internships are embedded in certain disciplines such as journalism and law as necessary steps to forge a career³⁰; while an internship can be beneficial for the student, a class divide is created as those who can afford to spend time in unpaid internships are better positioned to be employed in their field. Increasingly, there is appetite from universities, students, and employers for unpaid internships in other disciplines. The proliferation of internship opportunities on job sites which provide value to the employer, but few learning outcomes for the student, demonstrate that laws concerning unpaid internships are not being enforced. We would encourage Fair Work to undertake a hard-line approach to internships which do not meet the criteria for legality, including by proactively investigating employers believed to be engaging in this practice, and assisting victims of illegal unpaid internships to access compensation for their time.

Recommendation 7: That the Fair Work Ombudsman prioritises the investigation of employers engaging students in illegal unpaid internships.

Conclusion

Lack of payment for work is standard for graduate researchers, who perform research for the benefit of their university for less than minimum wage and in many cases for no payment at all. We allege that the Government is complicit in this wage theft against graduate researchers and must change their practices. Many graduate students are also victims of wage theft in their capacity as sessional or casual university employees.

Within the university community, students are often victims of wage theft in illegal internships and the casual jobs they undertake alongside their studies, most commonly in retail and hospitality. We urge the Government to resource the Fair Work Ombudsman to continue their educative efforts and conduct

²⁹ Fair Work Ombudsman 2017, Unpaid work, accessed from <https://www.fairwork.gov.au/ArticleDocuments/723/Unpaid-work.pdf.aspx>

³⁰ Stewart, A, and Owens, R 2013, Experience or exploitation? The nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia, report for the Fair Work Ombudsman, accessed from <https://www.fairwork.gov.au/ArticleDocuments/763/UW-complete-report.pdf.aspx>

proactive investigations of suspected dodgy employers. The Government must also protect international student victims of wage theft by legislating that those who report to the Fair Work Ombudsman do not face deportation as a result of working outside their visa conditions.

We extend our thanks to graduate students and staff at the University of Melbourne and other Victorian universities for providing us with their stories of experiencing wage theft. We also acknowledge the significant contributions of Annette Herrera to this submission, including through assisting in the collection of stories.