



# FRANCHISE SURVEY REPORT



## ABOUT THE YOUNG WORKERS CENTRE

We are a one-stop-shop for young workers, aged 30 and under in Victoria, who want to learn more about their rights at work or who need assistance in resolving workplace issues. Our team of lawyers, organisers, educators and researchers seek to empower young people working in Victoria with the knowledge and skills needed to end workplace exploitation and insecurity.

We produce resources aimed at assisting young people to understand their rights at work, such as fact sheets, as well as running training days and social events for young people who want to get involved in the fight for safe and secure jobs. The Centre is also an accredited community legal centre and provides personalised advice for young people who have come across issues at work such as unfair dismissal, bullying and harassment.

Since 2016 the Young Workers Centre has recovered more than \$2 million in compensation for young workers and delivered workplace rights training to over 50,000 young workers in Victoria.

## ACKNOWLEDGEMENT

Young Workers Centre and Victorian Trades Hall Council acknowledges the Traditional Custodians of the land on which it stands; the Wurundjeri people of the mighty Kulin nation. We pay our respect to their elders past, present and emerging. We extend that respect to all Aboriginal and Torres Strait Islander peoples today. This land was stolen and never ceded. This always was and always will be Aboriginal land.



54 VICTORIA STREET, CARLTON VIC 3053  
1800 714 754  
YOUNGWORKERS.ORG.AU

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## INTRODUCTION

*For years, franchise workers have approached the Young Workers Centre with reports of wage theft, unsafe conditions, and harassment in the workplace. After the explosive findings of rampant and systemic wage theft in 7-Eleven stores across Australia, the public perception that wage theft is just a case of 'bad apple' businesses has been shattered. Instead, we have seen more and more workers come forward to expose the systemic issue of wage theft and mistreatment in some of Australia's biggest franchise brands.*

While company head franchises have a heavy hand in store presentation and hygiene, with the goal of maintaining the reputation of the brand, they very rarely monitor or regulate wage theft. Failing to pay minimum legal wages should damage brand image in the same way, yet responsibility over that aspect of business is obscured and accountability evaded.

Franchises across Australia have vastly different structures, which adds to the complexity of untangling responsibility for wage theft. However, the common thread across many franchise structures is that arrangements are set up to avoid responsibility and blur the line between employer and company.

Franchisors and franchisees are usually separate legal entities. Most franchise contracts include clauses that relieve franchisors of any liability for a franchisee's conduct. It is extremely rare that a franchise contract contain clauses to direct or support franchisees to comply with Australia's workplace laws, and there is little to no further intervention by franchisors when it comes to employees' entitlements.

While franchisors make significant profits off the back of their franchisees' operations, they turn a blind eye to failure to comply with legal minimum entitlements such as wage theft, breaches of workplace health and safety and other breaches of the Fair Work Act (Cth) 2009.



As a result, workers are unable to or disempowered from holding either franchisees or company franchisors responsible for the mistreatment and malpractice that they experience in their workplace. Instead of a doubling of responsibility with the oversight of both franchisee and franchisor, franchise arrangements appear to dilute the responsibility of either 'employer' to the detriment of workers. This leads to a fragmentation of responsibility across different aspects of work; for example, when franchisors monitor cleanliness but not OHS, or when they monitor staff uniforms but not staff wages. Workers are consequently beholden to both franchisor and their store owner but cannot rely on either to maintain or enforce basic workplace entitlements or conditions, despite proper OHS and minimum wages being core to fair conditions of employment.

This pattern parallels that of the platform-based gig economy, where gig workers are held responsible for carrying the reputation of a major brand but are abandoned by the company when things go wrong at work.

The Young Workers Centre's 2018 report Health & Safety Snapshot: Young Workers in

Franchises already identified that many young workers feel unsafe working at their franchise workplace, particularly early in the morning or late in the evening due to elevated risks of harassment, risks associated with handling monies and serving alcohol or drug affected customers. The Snapshot also found that young workers are not educated about safety standards, and are presented mixed messages around whether the franchisor or franchisee is responsible for their safety in the workplace.

In 2020, the Young Workers Centre conducted another survey with 571 respondents to investigate and gather data about young workers' experiences of employment at franchises. This report examines the extent of illegal employment practices in franchises to make clear that franchise companies need robust regulation and investigation.

Given franchises are some of the worst perpetrators of wage theft, the Federal Government must amend relevant legislation, such as the Fair Work Act 2009 (Cth) and the Franchise Code of Conduct, to ensure there are multiple layers of accountability to maintain fair and safe employment conditions for all franchise employees.

## KEY FINDINGS

1

**When head office reps visit franchise stores, 98% inspect store presentation, yet only 8% want anything to do with workers' pay and conditions**

2

**61.2% of young workers experience wage theft working at a franchise**

3

**Franchises owned by company head offices are just as bad as franchisee-owned businesses when it comes to wage theft**

4

**The more employment experience young workers have, the more likely they identify as being underpaid at work**



## PARTICIPANT DEMOGRAPHICS

*Our survey collected self-reported information from franchise workers. We collected information about the involvement of franchisors, experiences of wage theft and other illegal workplace practices, as well as rates of pay during their employment in a franchise.*



Data was collected from 571 respondents across Australia, from March to April 2020 when COVID-19 was just hitting Australia.

Our survey was made up of both multiple-choice and open-answer questions to allow consistent data-gathering across the 571 participants, while also allowing room for participants to speak to their experiences in their own words.

The survey reached young workers across Australia and of all age groups working at over 70 different franchises.

**Franchises:** The largest group of participants in this survey currently work or have previously worked at a Grill'd franchise (165 respondents), followed by Subway (128 respondents) and McDonalds (59 respondents).

**Location:** Respondents from every state and territory in Australia participated in the survey. The majority of respondents who provided a postcode were located in Victoria (267 respondents), and 82 respondents were located in New South Wales, 64 in Queensland, 43 in Western Australia, 25 in South Australia, 13 in Tasmania, 6 in the Australian Capital Territory, and 1 in the Northern Territory. The remaining respondents did not provide a postcode.

**Age:** 95.6% of respondents were between the ages of 15 and 29, with the majority of respondents being between 18 and 24, likely school-leavers and tertiary education students. Respondents of this age are likely to be working part-time or casually, and are also likely to be studying for a qualification at the same time.

**Gender:** 76.7% of respondents were female, 20% of respondents were male, and 2.3% of respondents were non-binary. The remainder (1.1%) preferred not to say.

**Disability:** 87.9% of respondents did not identify as having a disability. 7.2% said they had a disability, and that it did not affect their capacity to work. 2.6% said they had a disability, and that it did affect their capacity to work, and 2.3% preferred not to say.

**Aboriginal and Torres Strait Islander identity:** 96.5% of respondents did not identify as being of Aboriginal or Torres Strait Islander background and 2.3% identified as Aboriginal. The remainder (1.2%) preferred not to say.

**Visa status:** 96% of respondents had Australian citizenship, and 2.1% were Australian permanent residents. 0.9% had student visas and 0.4% preferred not to say.



## RESULTS

### INVOLVEMENT OF FRANCHISOR

The survey results showed that, across franchises in Australia, it was common for company franchisor representatives to visit and inspect individual stores. Over two-thirds of survey participants, 388 of the 571 respondents, reported that a franchisor representative had visited the store where they worked.

“

*Head office encourages us to report misconduct and inappropriate behaviour yet does not follow up on these.*

**Boost Juice worker**

”

This suggests that most company franchisors consider themselves responsible for the regulation of their franchises, in one way or another. However, responses relating to the reasons for inspection reveal franchisors' key concerns.

#### When it comes to franchisor involvement:

- 98% of workers who reported that the franchisor visited their store said that the representative had come to inspect store presentation,
- 91% reported that franchisor representatives inspected store hygiene,
- 73% reported inspection of staff uniforms,
- 72% reported inspection of health and safety,
- Only 27% reported that the franchisor had any involvement in in-store staff training,
- Only 19% reported involvement in recruitment and hiring, and
- Alarming, only 8% of workers reported that the franchisor had involvement in pay and conditions.

Around half of respondents who received visits from the franchisor reported oversight of training online. Consequently, survey respondents indicated that the limit of franchisor's concerns when it comes to



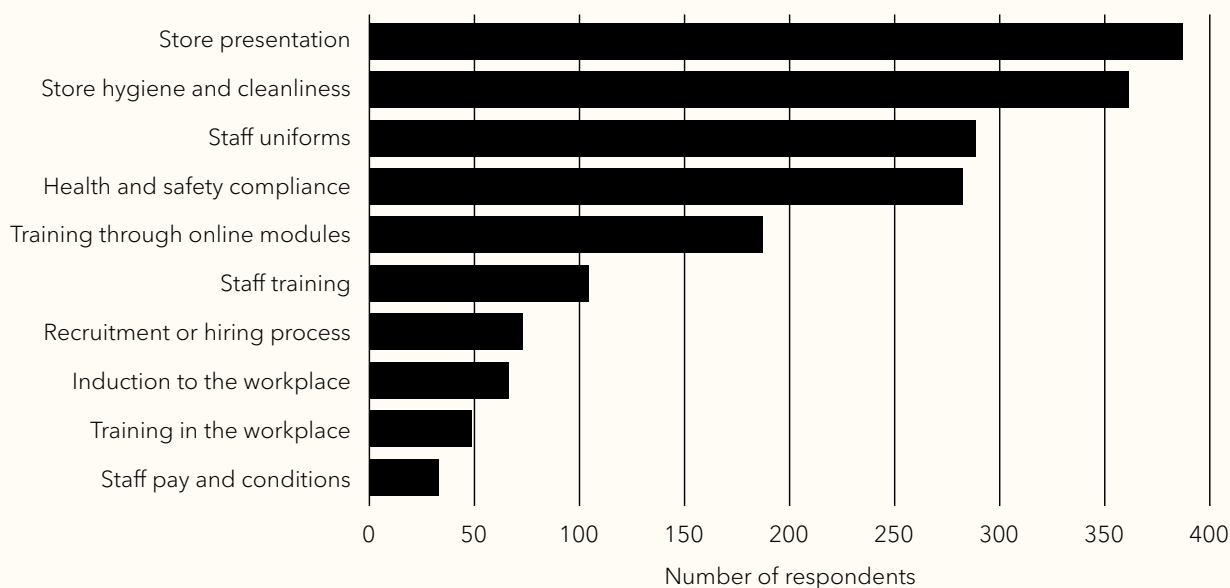
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[We receive] annual announced visits called a Brand Standards Visit (BSV) where a representative from head office conducts a “grading” of things ranging from food safety to cleanliness and customer experience. However franchises like mine spent 3 months preparing for this visit, almost tripling labour hours leading up to it.

**McDonald’s worker**

”

#### COMPANY HEAD OFFICE (FRANCHISOR) INVOLVEMENT



employees is training and health and safety, and it does not extend to the issues that young workers are commonly exposed to such as non-compliance with legal minimum wages and entitlements.

#### Workers clearly come last for company franchisors.

Which leaves pay and conditions to franchisees. While franchisors are evidently preoccupied with the outward appearance and cleanliness of a store representing their brand, little attention is paid to the conditions of work. Even where the franchisor is involved with working conditions, workers report exploitation and wage theft.

These brands are trusted because customers believe that the biggest brands hold themselves to the highest standard. Yet this is far from the truth, particularly when it comes to compliance with laws around employment and the treatment of workers.

One worker who worked at Salsas Fresh Mex said that the “franchisor took a year to pay the annual leave I was owed after the franchise changed hands.”

“

Head office is in charge of budgets and quotas as well as staffing and do not budget enough work hours to get all the work done, so staff are expected to work overtime without pay.

**Chemist Warehouse worker**

”

This data ultimately demonstrates that franchisor involvement is clearly focused on the outward reputation of a brand rather than the wellbeing and/or fair treatment of its workers, despite company franchisors significantly monitoring and regulating individual stores.



## WAGE THEFT

Survey responses found that the rates of wage theft at franchisee-owned and company-owned franchises are both extremely high. This demonstrates that neither franchise arrangement is fairer or better for workers, and that wage theft is a systemic problem, perpetrated as part of the entire franchise system, not just 'bad apple' franchisees.

“

*I was paid at trainee rates even when I was asked to train other staff.*

**Subway worker**

”

Despite the dual responsibility of the company franchisor and franchisee to ensure proper workplace practices, most respondents reported experiencing wage theft while working at a franchise.

Whether it's due to wilful negligence or intentional fraudulent practices, company franchisors and franchise owners consistently evade responsibility, to the detriment of workers. Young workers in particular often work in franchises in their first job. Yet, the widespread and significant wage theft that occurs in these workplaces mean their very first experience in the workforce is often one

where they feel exploited, disempowered and belittled.

**When it comes to their employers failing to pay their legal minimum entitlements, franchise workers reported that:**

- Over 61% (347 respondents) self-reported that they had not been paid the legal minimum wage while working at a franchise,
- 20.5% (116 respondents) said they did not know whether or not they had been paid properly,
- Only 16.9% of respondents (96 respondents) said that they did not experience wage theft, and
- 61.5% (351 respondents) said they never or only sometimes got paid penalty rates for working on public holidays and weekends.

When it comes to employers failing to pay legal minimum entitlements and wages within franchises, this data demonstrates that employers are more likely to exploit younger workers. Of 15- to 19-year-old respondents, 45% self-reported that they were not paid their legal minimum entitlements and 32% said



they weren't sure if they were paid correctly. Franchises are failing to adequately educate teenage workers about their rights at work, and have failed to provide the basic information to workers about their entitlements.

Employers are also failing to pay legal minimum entitlements and wages to a slightly older cohort of workers aged between 20 to 24. With an increase of age comes an increase of reporting of wage theft and other breaches of employment entitlements.

Of 20- to 24-year-old respondents, 67% self-reported that they were not paid their legal minimum entitlements, with a further 15% reporting that they were unsure if they were paid correctly.

Consistent with the previous age bracket, 68% of 25- to 29-year-old respondents self-reported that they were not being paid correctly, with 16% being unsure. This is still far too many workers who are experiencing wage theft due to their employers breaching their legal obligations. The issue of wage theft

in franchises is alarming and needs to be amended urgently.

Less than 1 in 5 (16.9%) of franchise workers reported that they could be certain they were being paid correctly.

Overwhelmingly in franchise workplaces, wage theft is the norm, rather than an exception.

Among those who self-reported wage theft, the most common form of wage theft was a failure to pay legal minimum rates of pay, experienced by 70%. Here, wages were most commonly stolen by employers paying a base rate below the legal minimum wage. Stolen penalty rates (53% of those who reported wage theft) and unpaid overtime hours (51%) were also very commonly reported types of wage theft.

Franchise workers who reported having their wages stolen also reported unpaid training, unpaid trials, employers failing to provide breaks, or failing to provide overtime rates

“

*[I] never ever got given breaks. Even on 10+ hour shifts. Sometimes I would also work 12-18 days in a row with no extra penalties. Been in contact with Subway franchisor about all the issues from the get go and still nothing has been done about it.*

**Subway worker**

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in the event that breaks were not provided, incorrect classification, as well as unpaid travel allowances and other loadings.

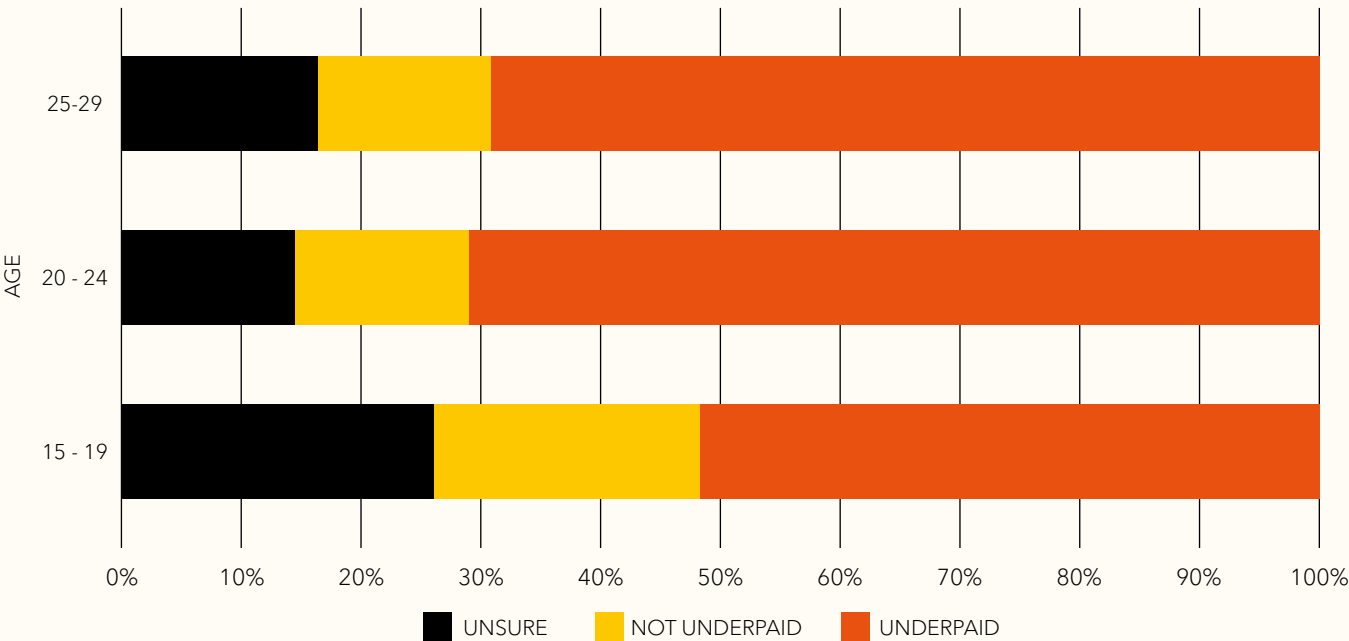
Survey responses also found that franchises owned by company franchisors are just as bad as franchisee-owned businesses when it comes to wage theft.

Among those who could identify that the company owned their workplace, almost three-quarters (74%) say they experienced wage theft. As a comparison among those who identified that the franchisee owned the workplace, well over half of workers (58%)

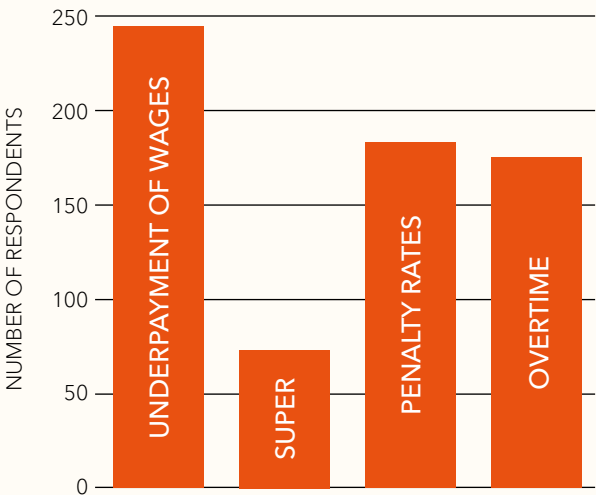
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Employed part time, but had no set weekly shifts and no guaranteed hours. Essentially employed as a casual being ripped off at part time rates.  
Grill'd worker  
”

said they experienced wage theft. Alarming, a quarter (25%) could not be sure whether they were being paid properly or not. Among those who did not know who owned the workplace, the experience of wage theft was also exceedingly high at 64%.

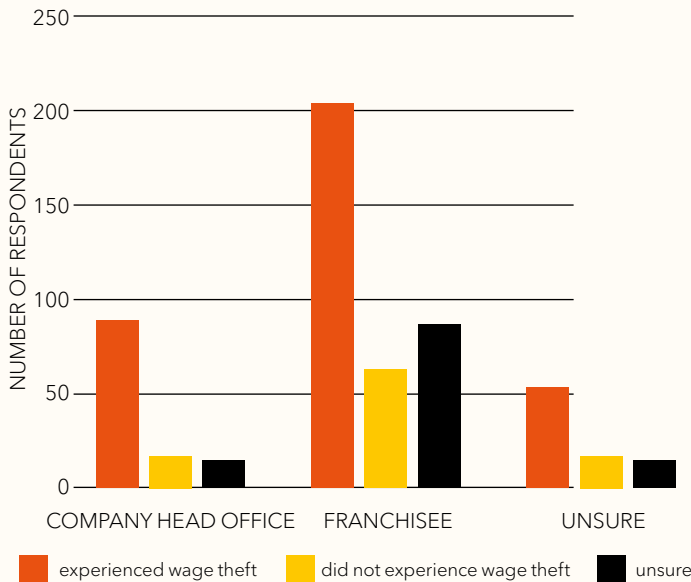
SELF-REPORTED WAGE THEFT BY AGE



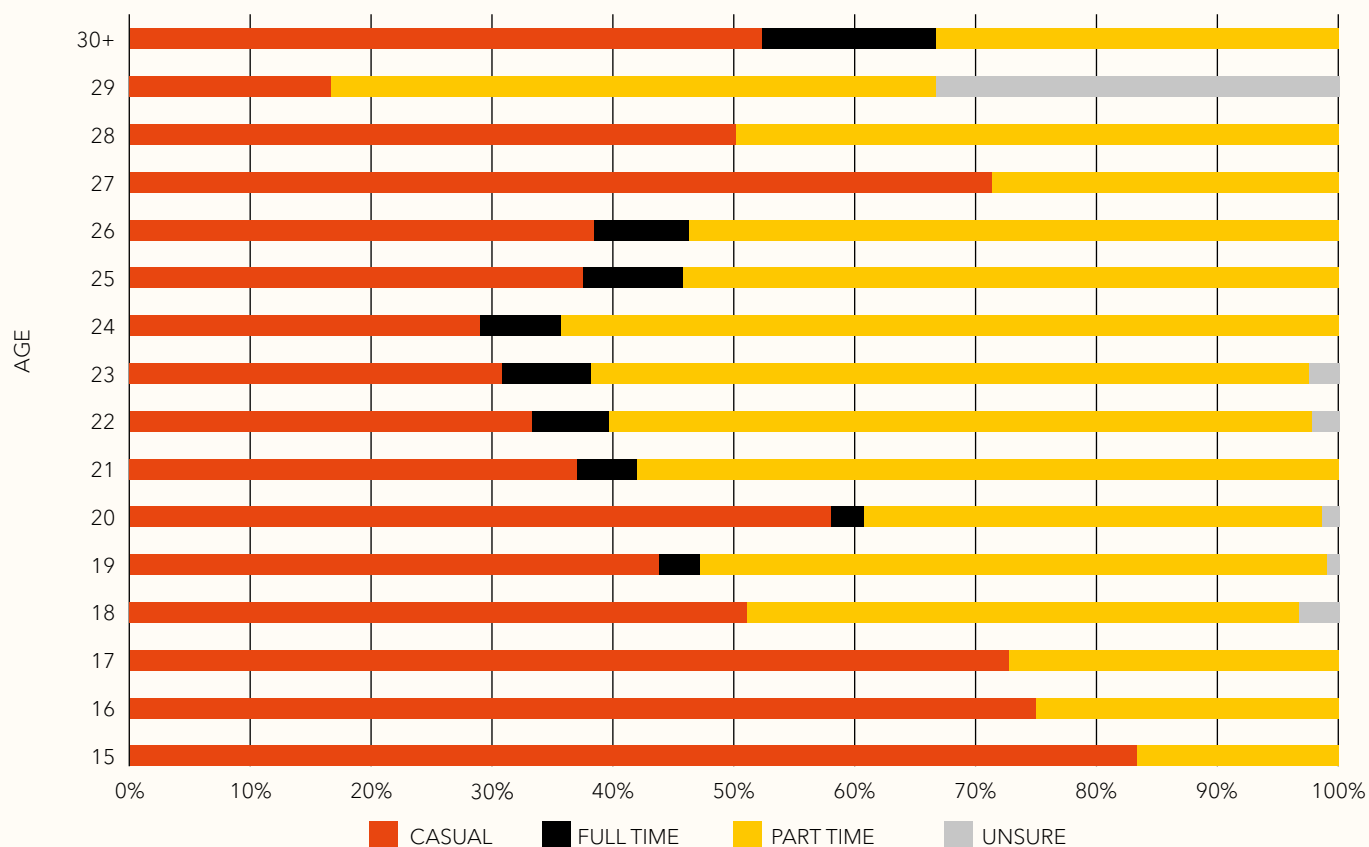
TYPE OF UNDERPAYMENT REPORTED



WAGE THEFT BY STORE OWNERSHIP



FRANCHISE WORKER EMPLOYMENT TYPE BY AGE



## INSECURE WORK

Casual employment is the predominant form of employment among respondents, with 270 out of 571 self-identifying as casual workers. 257 identified as part-time workers, 22 were full-time workers, and a further 22 either said they did not know their employment type or did not provide an answer.

*When I confronted [the franchisee] about being underpaid she told me that I could get another job. She also paid workers who were from China \$15 [per hour] (\$2 less than everyone else).*

**Coffee Club worker**

Many young workers are employed in casual arrangements, meaning they have no guaranteed minimum hours and therefore no guaranteed pay week to week. It also means they have no access to paid sick leave unless they qualify for the Victorian Government's sick pay guarantee scheme.

*Hours would fluctuate rapidly depending on how much management liked you that week. If you gave them unavailability due to uni or a birthday etc. I would often be 'punished' for the next few weeks or months with less hours even though there was nothing wrong with your work performance.*

**Zarrafra's Coffee worker**

Being casually employed also means that a worker can have their employment terminated at any time, notwithstanding the few who are eligible to claim unfair dismissal. Casual workers are much less likely to feel they are able to speak up about mistreatment or malpractice in their workplace. Casual employment only strengthens the ability to continue to steal wages and make workers unsafe.

Similarly, while casual workers have the theoretical right to refuse a shift or have a say over their own hours, the reality is that employers exercise a significant amount of



power over the ongoing employment of a casual worker, so a casual worker is unlikely to refuse a shift or request flexible hours because they know that their hours will be cut as a result.

The prevalence of casual employment arrangements further perpetuates the underemployment of young people in Australia. When young workers are employed casually, they have no say over the hours they get at work. Because so many young workers are casual workers, they experience significantly higher rates of underemployment compared to the general population. The latest ABS figures (March 2023) show that workers aged 15 to 24 experience an underemployment rate of 15.4%, compared to 6.4% for the general population, and want to work more hours than they're currently getting.

## COVID-19 OHS

While over half of respondents who received visits from company franchisors said that the representative inspected store hygiene and health and safety compliance, franchise workers still had to work in unsafe health conditions during COVID-19.

With about 80% of Victorian COVID-19 transmissions in workplaces, workers felt exposed and unsafe, while franchise owners and company franchisors did little to protect their workers or the communities around them.

In follow-up consultation in November 2020, franchise workers working on the frontlines of the pandemic, particularly in retail and hospitality, reported that they were not provided adequate personal protective equipment (PPE) and received abuse from customers who made them feel unsafe.

One Subway worker reported that they "had to ask customers to wear masks but wasn't allowed to [...] refuse them [service]", putting that worker at risk of exposure to the virus.

A Grill'd worker also reported lax enforcement of COVID-19 safety directives and being told not to wear a mask that would protect the worker from exposure to illness: "Customers often didn't care about social distancing or sign in requirements [...] Everyone wore masks

Ultimately, franchises exploit casual work arrangements to keep workers at their beck-and-call, as a tool to force them to 'give up' workplace rights, and as a way to silence those who speak up.

“

*All of a sudden, one week, I only had two shifts instead of five and when I [messed] my boss he would only reply [with] one sentence, "preferred hours would help." Which meant that he would give me more hours again if I signed an agreement giving up my penalty rates. So he essentially bullied me into taking a pay cut.*

**Subway worker**

”

for a little while but quickly everyone on [the] floor and serving customers stopped which I was very uncomfortable with [...] I was told by a superior not to wear a mask one day because the area manager was coming in (I was not given a reason why but I felt very conflicted and confused by it)."

One respondent who worked in a children's activity centre told the Young Workers Centre that they had to "sanitise everything between sessions adding to the unpaid hours I spend travelling, setting up and sorting."

Another franchise worker said they "have to ask customers to wear a mask, [but are] abused by customers when I ask them."

Inconsistent enforcement of COVID-safe measures has left franchise workers feeling vulnerable, unsafe, and exposed to harassment from customers.

Despite our evidence strongly suggesting that franchisor representatives monitor and enforce health and safety guidelines at franchises, workers are still not provided safe work conditions, even in a pandemic.



# HALL OF SHAME

## BAKERS DELIGHT

Only 7 of the 27 respondents who work or have worked at Bakers Delight said they did not experience wage theft. 14 self-reported that they had been underpaid while working at Bakers Delight and 7 were unsure. 11 out of 27 workers at Bakers Delight either never or only occasionally received penalty rates for working on weekends and public holidays.

One respondent who experienced wage theft and only recently began receiving payslips said: "Just sucks knowing I spent [two years

from] 16 to 18 years old working there and have saved barely anything."

"We are classified as part time but don't get regular shifts and only 6hrs per week."

"No Saturday or Sunday penalties; no penalties for early starts, no key holder/senior staff bonus, only time and a half for public holidays"

"No extra pay on weekends or public holidays"

## GRILL'D

126 of the 165 respondents self-reported that they experienced wage theft working at Grill'd. Only 10 said they did not have wages stolen, and 23 said they didn't know. The wage theft reported was primarily employers failing to pay the base legal minimum rate (97 respondents), but 72 and 70 respondents also said they experienced unpaid penalty rates and unpaid overtime, respectively.

When asked if respondents had anything further to share about their pay and conditions, one Grill'd worker simply said: "Below the poverty line".

Multiple respondents identified incorrect classification as a trainee having been forced onto a traineeship as part of their experience of wage theft. Many workers who were classified as 'trainees' were promised a payout of \$400 upon completion of the traineeship but very few received this payment, even after completing training.

## SUBWAY

88 out of 128 respondents who work or had worked at Subway said they'd had their wages stolen. Of Subway worker respondents, 30 said they weren't sure if they had been paid correctly, and only 9 respondents were confident they hadn't been underpaid.

70 respondents reported that they experienced having their wages stolen. Of those, 44 respondents reported not being paid penalty rates, 40 reported not being paid for overtime, and 24 had superannuation stolen from them. Other respondents also said they were not paid for trial shifts and not paid according to classification when supervising or managing.

One respondent told us they "never ever got given breaks. Even on 10+ hour shifts. Sometimes I would also work 12-18 days in a row with no extra penalties. Been in contact with Subway franchisor about all the issues from the get go and still nothing has been done about it."

Respondents also reported that they were employed as part-time workers, but given none of the requisite minimum hours or job certainty: "We were all employed as part time but our

Respondents also identified extensive issues with the work culture, including rampant sexual harassment, workplace bullying, lying about pay during recruitment, no provision of breaks, as well as coercion to accept employment conditions.

One respondent reported sexual harassment, misconduct, and illegal activity by management staff: "Grill'd is the most unhealthy, toxic and mentally draining place I have ever worked for." Another respondent also reported abusive management staff: "Management would shout at us and sometimes make us cry."

Not only have respondents indicated that Grill'd did not provide a psychologically safe work environment, they have also reported it was not physically safe: "It was horrible. No PPE when I asked for new gloves to clean the fryer with. I was told by the store manager we couldn't afford it. I got a lot of [scars] from burns from that workplace because we were expected to clean the fryer out [while it was] hot and on."

shifts changed in day/time/length each week. We were all kept under the limit so they didn't have to pay our super."

Workers also reported bullying, unpaid additional hours, no provision of breaks, inadequate training, and clearly incorrect classifications. One Subway worker said: "I was paid at trainee rates even when I was asked to train other staff."

Another told us: "I was 15 when I [...] was made to open the store by myself from 6-10am (the store opens at 7am) without any kind of adult supervision."

Several workers also reported that Subway management would force workers to sign contracts that undermined their workplace rights under the Fair Work Act 2009 (Cth). One respondent said that one store was "tricking vulnerable barely legal kids into a company contract that forfeits their rights."

Another worker similarly reported: "I was paid based on my individual contract which was under minimum wage."



## WORKER CASE STUDIES

*The following are a number of case studies of young workers who have contacted the Young Workers Centre since the survey responses were collected in April 2020. All workers' names and other identifying features have been de-identified to protect their privacy.*



In 2019, Sasha was a 16-year-old cashier at a bakery franchise. She was not permitted to drink from her water bottle while at the till, and was only given breaks of 5-10 minutes. Often, she was the only person on shift and could not take her break at all. Sasha started getting fewer shifts after her 16th birthday.

In 2022, Melissa was a 17-year-old waitress at a café franchise. She was paid a flat rate for all hours worked. She did not receive weekend or late night penalty rates, or any of the other loadings she should have been paid under the Award. She was responsible for training new staff members. She asked if she would be paid more when she turned 18. Her boss told her that her pay was 'high enough already'. She was paid less than the Award minimum.

Alexis started out as an 18-year-old cashier at a fast food franchise in 2017. Her employer did not ever make superannuation contributions on her behalf. She was usually left in charge of the store by herself. Alexis was once followed and harassed by a customer while she was working by herself. She considered making a WorkCover claim at the time, but knew the employer would fight the legitimacy of her claim, so couldn't bring herself to follow





through. She was paid less than the Award minimum due to a dodgy zombie agreement. She made an unpaid super claim through the ATO. Unfortunately, her employer entered liquidation, meaning she did not recover any of her unpaid super. Alexis worked for this franchise until 2021 and came to the Young Workers Centre with these issues in 2022.

In 2021, Juliet was a 20-year-old cashier at a fast food franchise. She experienced a serious mental health crisis and had to take sick leave to seek medical help. Her employer threatened to and ultimately did fire her for taking sick leave. She tried to complain about the franchisee's conduct to the franchisor, but they said it was out of their control.

Toby was a 23-year-old apprentice landscaper at a gardening franchisee. He was underpaid throughout his entire apprenticeship, totalling over \$20,000.00. Shortly after Toby finished his apprenticeship, the franchisee sold the rights to the franchise to another business and went into liquidation. Toby came to the Young Workers Centre with his workplace issue in 2020. Unfortunately, there was no legal way to reclaim Toby's unpaid wages.

In 2018, Kristy started as a 20-year-old barista at a café franchisee. She was paid incorrectly throughout her employment. After she finished up in 2020, she tried to contact her employer and request that her unpaid wages be paid to her. The employer ignored her. The franchisor said they would follow up with

the franchisee, but never got back to her. The franchisee ultimately closed down during the COVID lockdowns.

During a school visit in 2022, a Young Workers Centre outreach organiser heard from a student working at a fast food franchise that their employer failed to provide adequate drinking water, and that the employer made franchise employees pay for water on their shift. The worker brought their own water from home to work in a drink bottle, but the nature of their work meant they were often working in hot conditions and so were forced to pay for water or get dehydrated in hot working conditions.





## LEGAL CONTEXT

Regulation of employment practices specific to the franchise industry is barely regulated. Under current legislation and regulation, franchisors and franchisees are considered separate entities responsible for their own workers' wages and conditions. The current regulatory regime overseeing the franchising system is restricted to matters pertaining to the franchisor/franchisee relationship, with almost no mention of employees within a franchise. As a consequence, the regime fails to hold either franchisee or franchisor accountable for the treatment of workers.

The Franchise Code of Conduct (the Code) is the main form of regulation relating to franchises. The Code falls under the Australian Consumer & Competition Commission (ACCC), which operates at the Federal level. The current Franchise Code of Conduct delineates the type of information that franchisors and franchisees have to share with each other and the manner of behaviour when disputes arise. However, the Code does not make any mention of employment or workplace laws in franchise operations.

The Code fails to require a franchisor provide education or support to ensure that franchisees are doing the right thing by their workers under the Fair Work Act 2009 (Cth) and occupational health and safety legislation. As Maurice Blackburn have argued, franchisees are severely restricted in how they can conduct business because of restrictions around the price of stock, branding, opening hours, and participation including financial participation in compulsory marketing campaigns.

The only way that franchisors can be held liable for a franchisee's contraventions of the Fair Work Act 2009 (Cth) or occupational health and safety legislation would be if the franchisor has a 'significant degree of influence or control over the franchisee's affairs'. This depends on whether the franchisor has a technical right to 'direct, manage, regulate, determine or command the franchisee entity about financial, operational and/or corporate matters. This might be, for example, how the franchisee operates in terms of trading hours, sales targets or quotas, staffing levels, expenditure on business expenses and costs.



It also depends on how the relationship works in practice, such as 'how much the franchisor influences or contributes to management or operational decisions of the franchisee business, or affects the franchisee's ability to generate revenue or profits'.

Franchise agreements often have boilerplate clauses that ensure that the franchisor is not liable for the franchisee's compliance with legal obligations, despite the real power franchisors exercise to make massive profits, protect their bottom line, and shift all financial risk to franchisees. This results in franchisor contraventions under the Fair Work Act 2009 (Cth) rarely being enforced.

Legal scholars comment that franchisors and franchisees are separate legal entities, but this is obscured for everyday people by the 'system standardisation and uniformity which conveys the appearance of a single entity'. This standardisation is intentional and is a core part of the franchise business model that generates massive profits for franchisors. Most franchises are subject to strict rules that limit

a franchisee's ability to make decisions about the cost of doing business. Franchisees are also often obliged to buy uniforms and pay for marketing material from the franchisor, which can make business very expensive for franchisees who cannot afford it. This helps franchisor brands maintain a consistent reputation, but at the cost of franchisees who have little say. Franchisors are able to claim the profits of their franchises off the back of strict rules and compulsory costs borne by the individual franchisee.

This leaves one of the few avenues that franchisees are able to control to cut costs - their workers' wages. Indeed, many franchisees find themselves pressured to cut wages and conditions because of the financial pressure coming from the franchisor.

However, such pressures do not and should not absolve franchisees who have systemically exploited their workers for a profit. Instances of 'phoenixing' are common in the franchise system, where franchisees liquidate or abandon their business in order to avoid paying debts - debts that are often associated with stolen wages owed to workers. These franchisees then re-open a business under a new title or new directorship, to continue operating the business without the debt of unpaid wages owed to workers. This occurred in Tasmania where a Noodle Box franchisee was subsequently convicted of fraud. When employers engage in illegal phoenixing activity, they need to be held accountable to the law, but so should franchisors who allow phoenixing to happen under their watch. Currently, franchisors are not liable for wages owed to workers when a franchise liquidates, meaning there is no incentive for franchisors to weed out fraudulent franchisees. If the debt of owed wages were to fall back on franchisors, it would serve as a more effective impetus for franchisors to ensure franchisees are conducting business in compliance with workplace and corporate laws and provide greater support to franchisees who are ill-equipped or struggling to maintain their business.

No wage theft is acceptable.

That is why franchisors need to have a stronger obligation to ensure that franchisees

understand their duties to their employees, to ensure they fully understand the cost of employee wages and conditions, and to be responsible for repaying stolen wages when a franchise is liquidated.

One of the only legal mechanisms that franchise workers can use to combat this structural exploitation is Victoria's wage theft laws, which came into effect in 2021. The Wage Theft Act 2020 (Vic) criminalises the deliberate and dishonest failure to pay employee wages and entitlements, and the failure to keep accurate employment records. Under the Act, 'dishonesty' is drafted broadly, with the only defence being genuine due diligence.

The Wage Theft Act 2020 (Vic) also establishes Wage Inspectorate Victoria as a standalone statutory authority with enforcement powers. Alongside the Wage Theft Act 2020 (Vic), a fast-track process has also been introduced in the Victorian Magistrates' Court for bringing civil wage theft claims.

Victoria's wage theft laws effectively address the power imbalances present in the workplace and workplace cultures that contribute to wage theft, as they require employers to prevent wage theft. Given the extensive power differential between franchise workers and employers, these new laws are fantastic for franchise workers. Since the laws commenced, Young Workers Centre solicitors have filed a number of matters using the fast track process, and have made numerous reports to Wage Inspectorate Victoria.

Excepting Victoria's wage theft laws, franchisors have been able to use the law to their advantage, drafting franchise agreements that allow them to shed all liability for non-compliance with workplace laws that might occur at a franchise that is supposedly 'under their watch'. Despite strict monitoring of products, prices, cleanliness, and uniforms, franchisors actively avoid taking responsibility for employees and turn a blind eye to non-compliance. This has worked as a business model for some of the biggest franchise brands in Australia, but the sheer scale of wage theft experienced by franchise workers tells us that we must urgently hold franchisors accountable for the wages and conditions of workers they profit off.

# RECOMMENDATIONS

## FEDERAL GOVERNMENT

- Recommendation 1:** The Federal Government should amend Section 558B of the Fair Work Act 2009 (Cth), so that it is a strict liability provision with defences, rather than requiring workers to prove that the head franchisor knew or could reasonably be expected to know of breaches of the Fair Work Act 2009 (Cth).
- Recommendation 2:** The Federal Government should establish an independent regulatory body to oversee franchisor-franchisee arrangements and the franchise system more broadly. This body could be an ombudsman or an ongoing joint taskforce in partnership with the Australian Competition and Consumer Commission (ACCC).
- Recommendation 3:** The Federal Government should amend the Franchising Code of Conduct via the ACCC to place a clear obligation on franchisors to provide all relevant information to franchisees, including employment and industrial information.
- Recommendation 4:** The Federal Government should amend the Franchising Code of Conduct to include a positive obligation on the franchisor to ensure franchisees are upholding the requirements of workplace law, and vet potential franchisees who are or have been associated with the contravention of industrial or workplace law while operating a previous franchise.
- Recommendation 5:** The Federal Government should ensure that franchisors are equally liable for any breach with individual franchisees, by extending liability all the way to the 'principal contractor' in the event that lawful remuneration was not paid by a sub-contractor to their employees. This means embedding a Funder of Last Resort (FoLR) process and a protection against 'phoenix' activity of franchisees within the Code of Conduct.

## VICTORIAN STATE GOVERNMENT

- Recommendation 6:** The Victorian Government should provide funding to the Young Workers Centre to educate young workers in franchises on their rights in the workplace.

**Young  
Workers  
Centre**