Submission No 1

INQUIRY INTO TAX ADMINISTRATION AMENDMENT (COMBATING WAGE THEFT) BILL 2021

Organisation: Operation Redress Pty Ltd

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Our work

We are a self-funded two-person team striving to expose corporate misconduct in large, multi-national, and/or ASX-listed companies. Our research as worker advocates has helped expose systemic wage theft at 7-Eleven, Domino's, and Retail Food Group (Michel's Patisserie, Donut King, Brumby's, Crust Pizza, Gloria Jean's etc). Systemic wage theft has been a prominent issue in the franchising sector which unfortunately remains neglected by industry bodies and instead brushed aside as a "few bad apples". Wage theft can often be the tip of the iceberg, and further research uncovers unprofitable franchise models that, in a way, force franchisees to be complicit in illegal or immoral conduct.

As researchers and advocates, exposing corporate misconduct is just one important part of what we do. We conduct deep-dive research into companies and industries/sectors to determine if issues are systemic, what the regulators are doing about this, and who the main perpetrators are. We then try and find solutions for victims of misconduct, while trusting that exposing the problems will act as a deterrent for many companies. One of the challenges we face when doing this work is the lack of appetite for industry bodies and consultants to take charge and be leaders in tackling the systemic issues we raise. We face a lot of pushback for our advocacy, particularly from the franchising sector which has relentlessly campaigned against us and our work, despite never having any evidence that discredits our research.

We believe our research has been instrumental in leading to class actions against Transurban in Queensland, Domino's Pizza (a worker-led class action), and investigations into Retail Food Group for Michel's Patisserie franchisees. Further, Michael Fraser played a substantial part in exposing 7-Eleven, which resulted in $170 million in backpay for thousands of workers. We're currently looking into the cosmetic surgery industry (advertising cosmetic surgery procedures to children), after being tipped off about underpayment. We have underpayment investigations underway into other large companies.

The impact that wage theft and franchising misconduct has on the taxpayer hasn't been our primary focus, but it has been something that presents itself every so often and has enabled us to gain some unique insights.

Tax

It is important to note that we are not tax or finance experts, but through the course of our numerous underpayment and franchising investigations, we have observed where issues may exist that result in unpaid state and federal taxes.

The franchising sector unfortunately has a lot to answer for when it comes to a range of issues.

A franchisor will sell a franchise with limited viability to an unsuspecting person or persons. Some themes we've identified through the course of our research include:

- The franchisor will milk most of the potential profit out of the franchisee's business.
- The franchisee will underpay workers to make ends meet.
- The franchisee will use money intended for the tax office to survive, resulting in large tax debts.
- The underpaid workers will have less money to live on and pay less taxes as a result of reduced income.
- The franchisee can't survive and liquidates the business with large outstanding tax debts.
- The franchisor takes back the franchise for as little as $1 resulting in a windfall and resells or gifts (to shift liabilities) it to another unsuspecting person or persons (churn).
- The franchisor has access to sophisticated accountants and ensures maximum tax reductions while operating a model designed to enrich itself.
- The losers: the franchisees, workers of the franchisees, the taxpayers.

Note: Franchisors also avoid a significant amount of payroll tax by using the franchise model.

Case study: Domino's Pizza Enterprises
We all know about the significant underpayment history across the Domino's Pizza network, but few speak of concerns about the extent of tax owed by their franchisees trying to make ends meet as a result of Domino's aggressive business model.

Although many of these franchisees would not meet the threshold to pay Payroll Tax, many would have large outstanding tax debts. As far as we are aware, Domino's does not publish this data or indicate a problem may exist, but franchisees often have a different story.

When looking at a May 2020 statutory report by a liquidator to creditors pertaining to two franchised Domino's stores it seems clear a problem existed for years and the outcome was not good. The franchisee's company had four years of trading losses, had been trading insolvent, had huge debts, owed over $100k to the ATO and directed blame at Domino's business model. Domino's took over the stores and may have sold them again.

The report said: *"The Directors has advised that the Company failed due to insufficient cash flow as a result of Dominos Pizza's poor strategic business and profit models"*.

The report also said the company had been trading insolvent: *"I have identified a total insolvent trading claim of $150,084.86"*. And a debt was outstanding with the ATO: *"The amount of $103,439.73 being outstanding debt to the Australian Taxation Office"*.

It went on to say:
Trading Losses – the Company recorded a trading loss for the 2016, 2017, 2018 and 2019 Financial Years. The loss appears to be attributable to the high costs of sales and expenditure and the Company was unable to generate sufficient margins due to market competition. This was significant for the 2018 and 2019 Financial Years.

Inadequate Cash Flow – the Company's cash flow statements indicated that for the 2018 and 2019 Financial Years there was a significant drop in cash available to the Company compared to 2016 and 2017. Additionally, the balance sheets indicate that for the 2018 and 2019 Financial Years the Company was trading with a low liquidity ratio indicating they were unable to meet their short-term debts.

It is our view that in addition to auditing the Payroll Tax of Domino's Pizza and their larger franchisees, that in the public interest the ATO should request a list from Domino's pizza of all franchisee entities, current and former, of the last six years and provide a public report on the total of outstanding debts to the ATO of those entities and the percentage of the Domino's network they represent. We suspect Domino's will push back on this as the data may conflict with their glossy successful image.

7-Eleven should also be audited again and any data provided by head office should be thoroughly and forensically investigated.

Payroll tax

There are potentially many maneuvers franchisors may use to avoid various obligations that may also avoid payroll tax obligations.

One such move is to sell (for a small sum) or gift loss making stores to franchisees, which in some cases may be under some sort of a management agreement. This move has the potential to shift loss making stores off the company balance sheet away from investor scrutiny and potentially reduce the amount of payroll tax the franchisor pays. These franchisees are often referred to as "glorified managers". The glorified managers often work significant hours in the business just to make ends meet. If they were controlled by franchisor the wage costs would be significantly higher. So, even more tax is being avoided by the franchisor through the use of these arrangements.

Government departments

There is merit to the argument that various government departments should share information to assist in the investigation of a company. Fair Work would benefit from having access to state and federal tax data and vice versa.

A concern we do have about any government department conducting investigations into a company, especially large companies behaving badly, is the reliance on the information supplied. From our experience talking to whistleblowers is that some large companies have tampered with, deleted or withheld information from government departments when under investigation.

Further, the large company will have access to senior people from the government department, but the affected parties may not. This should not be the case.

For example, a large company like 7-Eleven may get access to senior Fair Work representatives, yet it is unlikely the underpaid workers would even know who is in charge at Fair Work and will only speak to lower level representatives. This can create an imbalance and cause senior representatives at Fair Work to feel empathetic towards a company and potentially impact their objectivity when deciding what action should be taken against a company.

It is important that any data supplied from companies is interrogated, whether it be for underpayments or tax audits. Even in the case of a payroll tax audit, we would suggest that prior to approaching a company, auditors randomly approach workers to ask them about their working conditions. This will help determine the extent of underpayment and how much payroll tax has been avoided.

- When do you normally arrive? Salaried and casual workers might be expected to come in early, unpaid.
- When do you go home? Salaried and casual workers might be expected to stay late (till up, clean, restock, etc), unpaid.
- What does your roster say? Salaried and casual workers might be expected to work beyond their rostered hours for no extra pay.
- When does your manager arrive? Managers are often exploited through contractual clauses that say “reasonable overtime” which is expected within their salary. Unfortunately this is being used as a loophole to underpay managers, and they are often expected to work 60+ hours for a 38 hour salary.

Upon auditing a company for payroll tax, by the time the company is approached, they won’t know what the auditor knows and may provide conflicting information. The auditor is then in a position to interrogate the data and collect the full payroll tax owed and issue penalties should they see fit for the provision of false information.

If the state or federal tax office detects wage theft, they should refer it on to Fair Work. Fair Work should do the same in reverse.

Large companies found to be doing the wrong thing should be named and shamed and heavily penalised. Reputational damage, embarrassment and a big hit to their wallet is the only way these kinds of companies learn.

Authors: Maddison Johnstone and Michael Fraser
Operation Redress Pty Ltd (Franchise Redress, Toll Redress, Wage Theft Australia)