

**Submission
No 6**

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

Organisation: Domino's Pizza Enterprises Limited

Date Received: 27 May 2021

Portfolio Committee No. 1 - Premier and Finance
Legislative Council
Parliament NSW

Via email:

portfoliocommittee1@parliament.nsw.gov.au

27 May, 2021

Dear Committee Secretary,

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

SUBMISSIONS OF DOMINO'S PIZZA ENTERPRISES LIMITED ("DPE")

Please find **enclosed** DPE's submission in respect of the Committee's hearing.

We hope that the submission will assist the Committee.

Yours sincerely,

Nick Knight

ANZ Chief Executive Officer

Domino's Pizza Enterprises Limited

Background

Domino's Pizza Enterprises Ltd (DPE) is an Australian-headquartered business, listed on the Australian Securities Exchange (ASX:DMP), with operations in nine countries.

As at the end Financial Year 2020, DPE's Australia/New Zealand store network consisted of 833 stores, of which 119 stores are owned and operated by DPE as corporate stores, with the majority owned and operated by small businesses (an average of two stores per franchisee).

DPE's headquarters are located in Brisbane, and as at the end of Financial Year 2020 operated 44 corporate stores in New South Wales. In Financial Year 2020, DPE remitted approximately \$1 million to the New South Wales Office of State Revenue.

DPE submits that the location of the company's headquarters, corporate store ownership, and predominantly franchised business (by typically small business owners) is important in the context of the Terms of Reference of the Committee.

DPE's response to identifying wage theft

DPE's history with identifying, and responding to, wage theft, has been well documented. However, as this first occurred seven years ago, and was first reported in media more than four years ago, the passage of time has meant the specific details have frequently been misrecorded or misreported.

For the assistance of the committee, the following details are worth reiterating:

- In 2014, DPE proactively commenced investigations into its store network after team members raised concerns
- DPE took action against franchisees who were identified as having deliberately underpaid their team members; this included the removal of some franchisees from the business, either through negotiated exit or the termination of franchise agreements.
- Through this process, funds were recovered for the repayment of identified team members.
- DPE subsequently undertook a nationwide audit of its franchisees for wage underpayments and engaged Deloitte to review its processes.
- The Company made further, significant investments, including in intelligence, investigation and training, to improve compliance across our business with respect to employee entitlements, including in relation to deliberate underpayments.

Based on extensive investigations, no connection has been found between franchise profitability and the deliberate underpayment of wages. Instead, the behaviour was driven by greed by a small proportion of the Company's franchisee network.

There have been subsequent, detailed, and independent investigations, including by the Fair Work Ombudsman, which completed an 18-month investigation of Domino's stores in 2018. This complemented Domino's own, comprehensive internal compliance program.

As Domino's reported at the time (November 2018):

"The findings of the (FWO) report revealed issues, the majority of which are administrative errors, totalling a little under \$2,000 of underpayment of wages for 20 team members across 19 stores over a four-week period. Specifically, one franchisee with two stores was responsible for over \$1,500 of the underpayment. The balance occurred across the remaining 17 stores where the average underpayment was under \$25 per employee.

Further, the underpayments related to only 19 employees out of an approximate 600 (3.2%). Therefore, correct payments were made to almost 97% of employees during the audit period.

The FWO found contraventions resulting in underpayments in;

- Three of the six corporate and joint venture stores audited totalling \$131.86; and
- 16 of the 17 franchised stores which have been audited, totalling approximately \$2,000 (\$1,530.68 of which was attributable to one franchisee).

The Fair Work Ombudsman committed publicly to review DPE's approach 12 months after the conclusion of the 2018 investigation, and no further action was taken to our knowledge.

DPE has previously provided submissions to parliamentary inquiries, including to the Senate Standing Committees on Economics.

A copy of that submission (March 2020) is attached (Appendix 1).

In that submission, DPE reaffirmed its unambiguous position:

Employers should be taking all reasonable steps to ensure they pay employees correctly, inadvertent underpayments to employees can happen and, when they do, should be corrected with haste and preventative measures put in place to lessen the likelihood of them happening again.

Intentional wage theft, on the other hand, is a crime and those who commit it should be treated accordingly.

It bears highlighting that at no stage has any regulator or independent body identified that the business model of DPE encouraged, promoted or required wage theft to succeed.

To suggest otherwise diminishes the hard work and dedication of hundreds of successful small business owners, many of whom started their careers as pizza makers or delivery drivers, while in high school or tertiary study.

Terms of reference

DPE notes the committee's terms of reference as:

To provide for measures to deter the underpayment of wages, including by allowing —

(i) the Chief Commissioner to reassess payroll tax liabilities more than 5 years after an initial assessment in certain circumstances of underpayment of wages, and

(ii) tax officers to disclose information to the Commonwealth Fair Work Ombudsman to assist in investigations of underpayment of wages and to the Secretary of the Department of Premier and Cabinet to assist in investigations of breaches of the Long Service Leave Act 1995, and

(iii) tax officers to disclose certain information about an employer in certain circumstances of underpayment of wages,

(b) to increase penalties, or introduce higher penalties for second or subsequent offences, for certain offences,

(c) to create an offence of knowingly evading or attempting to evade tax.

DPE's experience with New South Wales payroll tax obligations

DPE notes questions raised in the Committee's public hearings, and subsequently in the media, relating to its payroll tax obligations in New South Wales.

Firstly, DPE supports the proposition in the Committee's terms of reference, and in this commentary, that where there are reports of wages underpayments, those committing this activity should expect to have their taxation payments assessed to ensure they have met their obligations to the community. Where these obligations have not been met, DPE supports those responsible facing the full force of the law.

In the case of DPE's New South Wales payroll tax compliance, the background provided in this submission is important, namely DPE's head office is in Queensland, where the majority of its payroll tax is assessed and paid.

Due to the small number of corporate-owned stores operated by DPE in New South Wales, DPE has been diligent and transparent in meeting its New South Wales payroll tax obligations, and in the auditing of these obligations.

It is not surprising to DPE that only a small number of Domino's stores in New South Wales have been audited for payroll tax compliance following its identification of wage theft. Simply, those franchisees who committed wage theft represented only a very small proportion of Domino's franchisees, and this occurred in an environment where many Domino's franchisees do not meet the payroll tax threshold in New South Wales.

Nonetheless, DPE at all times provides all necessary assistance to government agencies including providing data and documentation where required to assist their independent audits and assessments.

DPE's response to the Committee's terms of reference

DPE's response is simple; while there is no 'silver bullet' to wage theft, by treating wage theft like other criminal activities, government and the community is more likely to reduce its occurrence. This requires a combination of increased surveillance, investigation and penalties.

DPE's previous, detailed recommendations to combat wage theft are included in the attached submission. To date, there has been limited take up of these recommendations by legislative bodies. However, DPE commends the response by the Queensland government, in criminalising the deliberate practice of wage theft.

Accordingly, DPE supports the measures outlined in the terms of reference as proportionate, targeted approaches that may assist in preventing and detecting wage theft in our community.

Committee Secretary
Senate Standing Committees on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA
6 March, 2020

Dear Committee Secretary

**INQUIRY INTO THE UNLAWFUL UNDERPAYMENT OF EMPLOYEES' REMUNERATION
SUBMISSIONS OF DOMINO'S PIZZA ENTERPRISES LIMITED ("DPE")**

Please find **enclosed** DPE's submission in respect of the Inquiry.

We hope that the submission will assist the Committee in its Inquiry. We would welcome the opportunity to expand upon DPE's written submission and to answer any questions that the Committee may have at the public hearings.

Yours sincerely,

Nick Knight

ANZ Chief Executive Officer

Domino's Pizza Enterprises Limited

Domino's Pizza Enterprises Limited's Submission to the Senate Standing Committees on Economics

Executive summary and recommendations

Underpayment of employee wages and entitlements is a widespread issue in Australia across many companies large and small, with examples being found in almost every sector.

While many of these instances of underpayments are inadvertent and relate in part to the complexity of Australia's award system or the limited ability of modern timekeeping and payroll systems to adequately manage those complexities, a smaller number can be described as 'intentional wage theft' where unscrupulous individuals deliberately cheat the system and abuse the power they have over employees for personal gain.

Domino's Pizza Enterprise Limited's (DPE's) position on these issues is unambiguous.

Employers should be taking all reasonable steps to ensure they pay employees correctly, inadvertent underpayments to employees can happen and, when they do, should be corrected with haste and preventative measures put in place to lessen the likelihood of them happening again.

Intentional wage theft, on the other hand, is a crime and those who commit it should be treated accordingly.

Like many other businesses, DPE has previously detected instances of intentional wage theft within its network. Unfortunately, there is no simple solution to identifying and uncovering intentional wage theft. DPE has built, and continues to evolve, systems to attempt to identify wage theft which include risk mapping, analysis of financial records, identification of altered records, an independent whistleblower hotline and unannounced inspections of stores.

As is the case with other types of crime, however, those committing intentional wage theft can expend great effort to bypass the safeguards that are in place and take steps to conceal their activities.

While no system can ever completely thwart intentional wage theft there is however an opportunity to greatly increase consequences for those individuals who choose to break the law and further their self-interest at the expense of others.

DPE believes the consequences for intentional wage theft are currently insufficient to deter unscrupulous operators and, in this submission, makes a number of suggested recommendations to address this deficiency.

Recommendations

1. All businesses in the retail and hospitality sectors should be required to keep a 'live' electronic record of time worked by all employees.
2. A process developed to enable Companies to hand over for investigation by the relevant regulator, information and evidence on businesses within their network that are conducting intentional wage theft.
3. Intentional wage theft should be criminalised and harsher consequences introduced.
4. Those found guilty of intentional wage theft should face a ban on company ownership and, where relevant, have business visas cancelled.
5. A publicly accessible register of those found guilty of intentional wage theft should be established.

Context

Who we are

Domino's Pizza Enterprises Ltd (DPE) is an Australian-headquartered business, listed on the Australian Securities Exchange (ASX:DMP), with operations in nine countries.

In Financial Year 2019, DPE's network of more than 2,500 stores had combined sales of \$2.89 billion, of which \$1.94 billion (67 per cent) were completed online. In the same year, more than half of the Company's profit was generated from more than 1,600 stores in its international operations in Europe and Asia. In Australia, DPE and our franchisees employ more than 18,000 team members, with an annual wages investment in excess of \$300 million.

Our experience

DPE has a proud history of employing thousands of young people; some consider Domino's a part-time job, others a stepping stone to a career, including those who become store managers, franchisees or executives within the company.

In 2014, DPE commenced investigations following team members raising concerns, identifying some franchisees who had deliberately underpaid their team members lawful entitlements, and took action against those responsible. This included the removal of some franchisees from the business, either through negotiated exit or the termination of franchise agreements. Through this process, funds were recovered for the repayment of identified team members.

In February 2017, media reports published that an investigation by journalists had "uncovered widespread underpayment of wages"¹ in DPE's business. It was also reported that "Franchisees blamed the underpayment on a brutal business model that was pushing them to cut corners."², with it "seemingly impossible for a number of franchisees to survive without underpayment."³

DPE's response, based on extensive investigations of wages underpayments it had already identified, was that there was no connection between franchise profitability and the deliberate underpayment of wages, and that the behaviour was driven by greed, by a small proportion of the Company's franchisee network. At the time, DPE shared average franchisee profitability was greater than \$120,000 a year, per store⁴, with some of those identified as engaging in wage theft owning more than one profitable store.

The public reporting relied, at least in part, on some of those who had already been removed from the business after DPE identified them as deliberately underpaying their team members. This behaviour, and subsequent public commentary, was embarrassing to the Company and the overwhelming majority of our franchisees who work hard every day to run successful businesses, relying on team members who receive their correct entitlements.

Current framework

The Company undertook a nationwide audit of its franchisees for wage underpayments and engaged Deloitte to review its processes to identify wage underpayments.

¹ <https://www.smh.com.au/interactive/2017/the-dominos-effect/>

² <https://www.afr.com/companies/retail/headwinds-at-domino-s-as-it-closes-financial-books-20190630-p522nd>

³ <https://www.smh.com.au/interactive/2017/the-dominos-effect/>

⁴ EBITDA; as self-reported by franchisees in Profit & Loss statements

DPE has made further, significant investments, including in intelligence, investigation and training, to improve compliance across our business with respect to employee entitlements, including in relation to deliberate underpayments. We acknowledge that our business is not perfect in this regard, however the Company is working diligently with the aim to become best-practice in not only the fast food industry, but more broadly among Australian employers.

DPE's view is clear; all team members should be paid their lawful entitlements for the entirety of every shift. To assist the Committee's work on wage theft, and without downplaying DPE's other wages compliance activity, this submission more narrowly focuses on the intentional underpayment of wages.

DPE takes responsibility for the fact that some franchisees did not do the right thing by their employees. They did not respect team members, employment law, their fellow franchisees or our business. DPE accepts this area remains a focus for our business, and it will remain that way.

This context is important for the rest of DPE's submission under the terms of reference. DPE does not intend to provide commentary on the myriad of wages underpayments reported throughout the Australian economy, from small business through to government agencies, other than to note that this issue is not restricted to the franchising industry. It is an issue across businesses of all sizes and in all industries. Nor does DPE downplay the importance of these other underpayments that the Committee is investigating.

However, DPE's submission is primarily focused on 'intentional wage theft', as opposed to these other underpayments, also referred to by the Committee and others as wage theft and all further mentions of wage theft in this submission should be interpreted as 'intentional' wage theft as opposed to inadvertent underpayments. What we contend constitutes 'intentional' is something we address later in our submissions.

DPE's position is clear. To properly examine the causes, extent and effects of unlawful non-payment or underpayment of employees' remuneration, we must focus on those responsible.

"Intentional wage theft is a crime, and the perpetrators should be treated accordingly."

Terms of Reference:

The forms of and reasons for wage theft and whether it is regarded by some businesses as 'a cost of doing business';

In many areas of business, as in life, there are those who will seek illegal shortcuts, frequently justifying their behaviour on the grounds it is 'a cost of doing business' for their peers and competitors.

Far from being 'a cost of doing business', the elimination of wage theft can only help those doing the right thing. This is because wage theft is not only detrimental to impacted employees, but also to those competing small business owners who are obeying the law, but being undercut by those with an illegal, artificially lower cost base.

Those committed to growing their businesses through better products, service and image, will (with a level playing field) invariably be more successful than those who are unable, or unwilling, to put in the effort required to be relentlessly focused on delivering value and a premium experience for customers. DPE's franchisees are confident of their opportunities in such an environment.

The best means of identifying and uncovering wage and superannuation theft, including ensuring that those exposing wage/superannuation theft are adequately protected from adverse treatment;

DPE submits there are three broad foundations that are necessary to protect employees from wage theft including: a level playing field between employee and employer, regular monitoring of wage compliance, and real consequences for those intentionally breaching their obligations (the latter is covered on the following page).

DPE respectfully submits that these foundations DPE has built, and continues to evolve, systems to attempt to identify wage theft. Some of these systems and processes must be kept confidential, in order to prevent those determined to commit wage theft from avoiding detection.

However, broadly, these systems include sophisticated risk mapping, analysis of financial records, identification of altered records, and unannounced inspections of stores. Domino's also has a whistleblower hotline, independently operated by Deloitte, which is accessible by any team member with a concern.

Why can't technology be used to prevent intentional wage theft? While technology can no doubt be effective in the prevention of wage theft, this question underestimates the complexity of intentional wage theft.

There is no simple solution to identifying and uncovering intentional wage theft. Those committing intentional wage theft take steps to conceal their activities, that may include coercing others, and falsifying evidence in order to thwart an investigation if uncovered. Employees may also be complicit in the activity for various reasons.

For example, a team member may be rostered for a four-hour shift, work that four-hour shift, and have wages deposited into their account for those four hours. Every record, from time and attendance logs, GPS tracking (if they are doing deliveries), point of sales logins, store accounts, through to bank transfers, will align. However, this would not prevent a person determined to cheat others from demanding that team member go to the nearest ATM, withdraw a portion of their wages, and return it to them. This 'cash back' scheme has previously been publicly reported in some cases of intentional wage theft in retail and hospitality businesses.

However, not all businesses have the size and capability to implement the measures outlined above, which means there is less opportunity to foster a level playing field between employees and employers. Some unscrupulous employers may seek to take advantage of this imbalance.

A necessity in deterring and detecting intentional wage theft in the Australian economy is on-the-ground inspections of suspect premises. The possibility an inspector, either government or a corporate head office team member, can visit at any time to verify those currently working are being paid correctly, is important. However, these efforts can be hampered by one glaring absence in Australian and state regulations; compulsory, 'live', time and attendance records.

DPE submits that all businesses in the retail and hospitality sectors be required to keep a 'live' electronic record of time worked, with team members required to 'clock on' at the start of each shift. This provides inspectors with an important starting point should they arrive unannounced and find an employee's presence is not reflected on an official record. Additionally, it provides an audit trail should a manager or business owner attempt to retrospectively adjust the hours a team member was working.

DPE believes this is so important, that it has implemented this system in all stores.

DPE is also aware of published reports, though not from our own business, of employers within the hospitality industry relying on 'contractors' to avoid employment obligations, such as superannuation, award wages, and maximum hours for international students. By appointing 'contractors' (who are, to all intents and purposes, employees) with their own Australian Business Number (ABN), these employers seek to avoid their lawful obligations. DPE is also aware of reports that temporary residents, including students, have been employed under such arrangements. DPE is unaware of any public policy benefit from allowing temporary residents, including students, to set up their own independent 'businesses', given there are already provisions in immigration law to allow for legitimate business investment. DPE suggests examination of this practice may be another avenue to identify, and eliminate, wage theft.

There is no silver bullet to identifying and uncovering intentional wage theft, whether via a whistleblower hotline, biometric scanning or live time and attendance records. Instead, a multi-layered approach must be implemented, and continually updated, relying on detection, employee education, victim reporting, and concerns raised by third parties. There is additional complexity for a franchisor trying to identify and rectify underpayments committed by a franchisee in what is ultimately their own business.

The fact there is no single solution should not be read as DPE taking the view that these measures are not of value in attempting to stop wage theft. Just as roadside breath tests and random drug testing of motorists will not stop all those who choose to drive while intoxicated, these measures are nonetheless important in deterring, and detecting, wrongdoing.

Whether extension of liability and supply chain measures should be introduced to drive improved compliance with wage and superannuation-related laws;

DPE submits that the most effective way in which to address intentional wage theft is to treat it like other forms of criminal behaviour.

Currently the consequences for intentional wage theft are insufficient to prevent unscrupulous operators.

What should constitute 'intentional' or 'criminal' wage theft is a matter for the Committee, but DPE submits that the type of activity that should be criminalised would have the features of being systemic, deliberate, coercive, or including elements of bullying or exploitation of a particular class of employee.

In DPE's submission these changes would go some way towards reducing intentional wage theft. Regarding an "extension of liability" as in this term of reference, it would appear premature to punish those removed from the unlawful activity, if the individual committing that action isn't themselves subject to punishment.

DPE also submits that where a franchisor has taken reasonable steps to detect wage theft yet a Sub-franchisee that has committed wage theft has attempted to avoid detection through deliberate actions, this would be a defence in any accessory liability. Further, DPE submits that, where a franchisor suspects, has detected and/or has gathered evidence of intentional wage theft, that a process be developed enabling franchisors to hand over the information to the relevant regulator for investigation without fear of prosecution.

DPE further submits that the punishment associated with wage theft should prevent future wage theft, both by preventing the person responsible from committing wage theft in the future, and by acting as a deterrent.

To that end, DPE suggests that, in addition to consideration of standard criminal penalties (including restitution), **those responsible for wage theft should face a ban on company ownership and, where relevant, cancellation of any business visa.** A publicly accessible register of those banned would be of assistance to other employers.

It is unconscionable that a person identified as building a business on the foundation of intentional wage theft should be considered a 'fit and proper person' to conduct further business and employ team members, or to remain in the country where the very justification for their residency was based on the lawful operation of a business.

This would further prevent a person who has committed intentional wage theft to move from business to business, 'phoenixing' their operations, or by using the profits of wage theft to buy into another business or franchised operation.

These measures would represent a dramatic increase in the consequences for intentional wage theft. DPE submits they are fair, targeted, and reflect the seriousness of intentional wage theft to the Australian economy.

DPE looks forward to working alongside government in ongoing efforts to prevent individuals and businesses from breaking the law, or using other efforts to pay team members less than they deserve. DPE and its franchisees are confident of success on a level playing field.