

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 1 – PREMIER AND
FINANCE**

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

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Monday 24 May 2021

The Committee met at 9:15

PRESENT

The Hon. Tara Moriarty (Chair)

The Hon. Taylor Martin
The Hon. Daniel Mookhey
The Hon. Adam Searle
Mr David Shoebridge
The Hon. Natalie Ward

PRESENT VIA WEBEX

Ms Abigail Boyd
The Hon. Ben Franklin

The CHAIR: Welcome to the public hearing of the Portfolio Committee No. 1 inquiry into the Tax Administration Amendment (Combating Wage Theft) Bill 2021. I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the Elders of the Eora Nation past, present and emerging and extend that respect to other First Nations people present. Today we will hear evidence from Unions NSW, Wage Theft Australia and Revenue NSW.

Before we commence, I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. Parliament House is now open to the public. All visitors, including witnesses, are reminded that they must have their temperature checked and register their attendance within the building via the Service NSW app. I ask visitors to please see the secretariat if you need assistance with this and remind them to please maintain appropriate physical distancing at all times.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within 48 hours. This short time frame is due to the compressed inquiry time line.

MARK MOREY, Secretary, Unions NSW, sworn and examined

THOMAS COSTA, Assistant Secretary, Unions NSW, affirmed and examined

The CHAIR: I welcome our first witnesses. You are welcome to make a brief opening statement if you wish.

Mr MOREY: Thank you, Chair. Just going through the bill, for us it seems that there was some assumption that there was potentially a Federal wage theft legislation going through and that this was complementing that. While we welcome any attempts to stop wage theft, we believe that this bill has a number of limitations. Indeed, you are only going after payroll tax in the essence where there is a finding of an underpayment. We think that a more substantive bill needs to be put through the House that actually has disincentives to wage theft. We do not believe that this bill does that. There is a need to actually criminalise systematic, repetitive wage theft in this State. I know that the second reading speech says that that is a Federal responsibility but we believe it is actually a State responsibility, as Queensland and Victoria have also criminalised wage theft. While we welcome this as an initial step, we think there are a number of other additional things that could be implemented to stop wage theft.

The CHAIR: Thank you. I will open it up to questions, beginning with the Opposition.

The Hon. ADAM SEARLE: Mr Morey, I note that one of the criticisms of the legislation by the Australian Industry Group in its submission is that it is not only or even mainly related to combating wage theft—or even the broader issue of the underpayment of wages. It obviously takes a strong view against wage theft. That is consistent with the views you have just outlined just now that the bill is okay, as far as it goes, but your view is there needs to be other things either added to it or in separate legislation, particularly to criminalise it.

Mr MOREY: One of the weaknesses we see in the bill is that businesses could continue to pay payroll tax, and as long as you are paying your payroll tax you could still run a scam where you are underpaying your workers. I agree with the Australian Industry Group: While there is a good initiative in this, there actually needs to be criminalisation of wage theft and disincentives to actually doing it for businesses. When I say that, that is not businesses that make a mistake or make an error—that we understand. What we do not understand is where people are systematically ripping people off millions and millions of dollars and getting away with a minimal contrition payment to the Fair Work Ombudsman. It is not actually a disincentive and many large organisations I think are now building it into their business model.

The Hon. ADAM SEARLE: You make the point in your submission that there is no proposal, as far as you know, about increasing the number of Revenue NSW inspectors. It used to be the case that the State Government would also have different inspectors that would look at books to see whether people had appropriate workers compensation insurance. That is something that should be pursued as well, do you not think, in terms of making sure that everyone is paying their right freight?

Mr MOREY: Workers compensation, superannuation—there were inspectors. There was also an ability for unions to investigate and look at books where they believed there were underpayments going on. Many of those things that were deterrents have been removed. I think there is a culture now where people are building wage theft into their business model.

The Hon. ADAM SEARLE: Some of the terrible examples of wage theft we have seen included workers being ripped off \$30,000 to \$40,000 each based on award wages—which are, let's face it, very much minimum wages. That is pretty awful. Natalie James, the former Fair Work Ombudsman, said, "Look, you could double the budget of the Fair Work Ombudsman and you wouldn't even scratch the surface." Many businesses, unfortunately, are approaching the issue from the perspective of, "Look, we probably won't get caught because there are not enough people looking." Apart from having more inspectors—and I think you said allowing maybe unions to have a greater oversight role—what are some of the other mechanisms that we could perhaps look at?

Mr MOREY: I think there needs to be penalties where you are actually—there should be a process where you are convicted of systematic wage theft. That does not occur. There is no deterrent in the system. I note that the Fair Work Ombudsman do a lot of media releases about catching people, but at best there is a contrition payment that businesses make. No-one is actually prosecuted for actually doing the wrong thing. As I said before, it is not about people making mistakes; it is about people who have set up their businesses to ensure that they are taking money off people and undercutting award wages. We know that many business operators are saying—certainly to us—that it is not a level playing field: "I set up my business, I pay award wages, I pay all the appropriate penalties and then someone sets up next to me, they are undercutting everything and I can't compete."

The Hon. ADAM SEARLE: How important is it that we call things for what they really are? If an employee engages in taking money from the till of their employer, that is rightly called theft. Where employers deliberately, systematically do not pay what they should, there is an importance just by itself, is there not, in actually calling that behaviour out for what it is?

Mr MOREY: "Wage theft" is a term that I think we have been using for a while to actually get the issue on the table. We have seen an escalation in the number of cases of wage theft probably over the last 10 years where it is now at extraordinary levels. We know the industries in which it is occurring, such as hospitality. Certainly we have just released a report on the horticultural sector. There is a number of businesses that we come across in manufacturing and those sorts of areas where this is going on. I think probably in the last 10 years a culture of "this is a business model" has developed and because there is no actual legal deterrence it continues.

The Hon. ADAM SEARLE: My last question is that there has been some criticism about the increased penalties in this bill. Do you share those concerns, or do you think they are appropriate given the types of behaviours we are trying to stamp out?

Mr MOREY: They probably should go further.

The Hon. DANIEL MOOKHEY: Hello, Mr Morey and Mr Costa. It is nice to see you. Thank you for joining us. Is there any circumstance in which it is okay for an employer to deliberately steal a person's wages?

Mr MOREY: No.

The Hon. DANIEL MOOKHEY: Do you agree with me that in scenarios where there is a deliberate theft of wages from an employee that it equally robs honest businesses that pay correctly of a competitive advantage?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Do you equally agree that for a person who has deliberately underpaid their wages there is a likelihood that they have under-declared the amount of wages for the purposes of assessing payroll tax?

Mr MOREY: Yes, and tax and superannuation.

The Hon. DANIEL MOOKHEY: Do you therefore also agree that in fact a wage thief is not only robbing the worker and robbing an honest business but also robbing taxpayers?

Mr MOREY: That is correct.

The Hon. DANIEL MOOKHEY: Do you therefore see that there is a need for a payroll tax response as much as there is a need for the criminalisation that you have called for?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Do you think, in terms of the payroll tax dimension, that there is a responsibility on Revenue NSW and the equivalent bodies in other States to ensure that our tax laws are being properly enforced?

Mr MOREY: Yes. We probably also suggest that from our reading of the bill it is not unless there is a conviction or someone has actually been identified as not underpaying their workers that Revenue NSW would actually intervene. We think they should be doing more preventative work as well.

The Hon. DANIEL MOOKHEY: I was going to ask you that. Under the provisions of the existing bill the ability of Revenue NSW to engage the regime that is proposed depends upon the Fair Work Ombudsman having already made a conviction.

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Do you see that in the bill?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: I will put this into the known context. You are aware of the issues that emerged in 7-Eleven, are you not?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: You are aware of the issues that emerged in Domino's?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Are they two examples of what you are saying about a deliberate business model that is either explicitly designed to create circumstances of wage theft or have led to wage theft? Do you agree that they are two good case studies of what you are talking about?

Mr MOREY: Yes, and the Calombaris case in Victoria is another example.

The Hon. DANIEL MOOKHEY: Yes, that is a good example too. Basically in those scenarios, because the master franchisor had created a franchise structure which meant that for franchisees, the only way in which they could be profitable would be to underpay workers. Do you agree that that is what effectively the finding of the Fair Work Ombudsman was?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: You agree that that was the result also of the Senate inquiry into those matters?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: That was led by John Williams from the National Party?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: You are familiar with that?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: In that scenario, is it the case that the point of conviction under the Fair Work Act firstly is still ongoing with some of those franchise networks?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: And six years after these first came to light?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Therefore, is it the case that it is not unlikely for us to assume that if this bill was to be passed in its current form, it could take up to six or seven years before Revenue NSW has to take any action?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: That is a reasonable prospect?

Mr MOREY: That is a reasonable prospect from our undertaking because you are relying on third parties to identify who has committed the act before they can engage in any sort of prosecution.

The Hon. DANIEL MOOKHEY: Wouldn't the better way here be that when either an allegation is surfaced that is credible or an investigation commences by the Fair Work Ombudsman, that would be the right trigger point for Revenue NSW to launch its investigation. Do you agree?

Mr MOREY: Yes or if someone reported an incident or wage theft directly to Revenue NSW.

The Hon. DANIEL MOOKHEY: Those three much earlier in time would be what we are talking about here?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: There are just two other issues that I wanted to surface. In so far as there is publicly available information about who is paying their taxes and who is not, or who is actually paying their taxes, are you familiar with the regime that exists at the Commonwealth level in so far as the Australian Tax Office [ATO] has tax transparency arrangements?

Mr MOREY: Not in detail but I am aware of it, yes.

The Hon. DANIEL MOOKHEY: This is the requirement that the ATO has to publish effectively the top 200 taxpayers of company tax each year. You are aware that that is what the ATO does?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Is there any reason why we should not have such an arrangement in New South Wales?

Mr MOREY: No, I think it is fine. Unions have to publish their top five wage earners, so I do not see why businesses do not.

The Hon. DANIEL MOOKHEY: We are not even going to the level that we have to publish the individuals themselves, of course. Privacy considerations matter. Do you think that the introduction of tax transparency principles to payroll tax would increase public confidence in how our laws are being enforced?

Mr MOREY: I think any transparency such as that would ensure that there is more confidence in the system.

The Hon. DANIEL MOOKHEY: Do you think therefore also that if there were the introduction of tax transparency principles for payroll tax, that might actually enliven the public debate around the future of payroll tax?

Mr MOREY: I think it would and I think it would be a good option.

The Hon. DANIEL MOOKHEY: To the extent to which your members and your affiliates say to you that payroll tax comes at the expenses of a wage increase and therefore it is not a desirable tax, is that a view that you are familiar with?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Do you think therefore that if you are interested in reforming payroll tax, a tax transparency regime will either aid public debate or harm it?

Mr MOREY: I think it would aid public debate.

Mr DAVID SHOEBRIDGE: Thanks for your submission and for your ongoing engagement in the issue. This bill has not come out of nowhere.

Mr MOREY: No.

Mr DAVID SHOEBRIDGE: One of the key recommendations you make is actually putting inspectors on the ground. How would that work in practice?

Mr MOREY: I think one of the things we find on two levels—the surveys that we have done show that where people actually are being underpaid, they have nowhere to report it. When they do report it, it may or may not be actually taken up. The third area we have looked at consistently is workers on visas. I know that since COVID that has slowed but what we saw was a melding of the immigration Act with the Industrial Relations Act. We had a second tier of workers who are here on visas, unable to enforce their rights, and so they had no-one to actually report these sorts of issues to. I think for us at a State level, there is no avenue to actually report wage theft to or have it investigated. As I said before, having more inspectors on the ground where they are able to be contacted by unions who have got cases and refer them on, I think that would be a very good deterrent.

Mr DAVID SHOEBRIDGE: One of the other submissions we have from Wage Theft Australia says that if there is going to be an audit of information supplied by employers, that actually needs to have a reality check by talking to the workforce themselves. Do you agree with that?

Mr MOREY: Yes.

Mr DAVID SHOEBRIDGE: What, if any, role could the union movement have in assisting that?

Mr MOREY: We have participated on a number of tripartite boards and those sorts of things. I think that having that sort of oversight as a starting point would be worthwhile, having the employers who are supportive of stopping wage theft, ourselves and the Government having a tripartite focus on it. I think unions having—

The Hon. NATALIE WARD: Sorry, did you say tripartite boards?

Mr MOREY: Tripartite approach.

The Hon. NATALIE WARD: Approach.

Mr MOREY: Yes.

The Hon. NATALIE WARD: You did not say boards.

Mr MOREY: There have been boards.

Mr DAVID SHOEBRIDGE: I think he said earlier they had been on tripartite boards.

Mr MOREY: Yes, boards as well. Previously there has been often tripartite approaches to this where you have got the government, unions and employers working together to stop issues in the workplaces.

The Hon. NATALIE WARD: Can I just understand that. Sorry to interrupt. So you are proposing a tripartite board for revenue?

Mr MOREY: No, a tripartite approach where the three parties—the unions, employers and the Government—actually work together. What we see—

The Hon. NATALIE WARD: Yes, I understand all of that totally. But in what mechanism?

Mr MOREY: We want a mechanism and if there is an overarching body, like you would think—historically I am trying to think of one that actually works. It used to be the Industrial Relations Commission, where there were broad appointments from different sides and you have a balance on those committees and oversight committees. It does not mean that it has to be a board, but I think there should be some sort of oversight committee to this that engages the key players in this area.

The Hon. NATALIE WARD: A Revenue NSW oversight committee?

Mr MOREY: No, I am not saying that. I am saying if—

The Hon. ADAM SEARLE: Wage theft oversight committee.

Mr MOREY: There are two aspects to it. There is Revenue NSW; I do not want to be on a board or have any—

The Hon. NATALIE WARD: No, I am just trying to understand what you are saying.

Mr MOREY: But I think there needs to be an overarching tripartite approach to wage theft in this State that has the unions, employers and Government involved in it that is actually coming up with models and ways of addressing it.

The Hon. NATALIE WARD: You might take it on notice. I am just wondering what that mechanism is.

Mr DAVID SHOEBRIDGE: I think this jumped off at a point of what role could unions have working with inspectors on the ground.

Mr MOREY: I think a very close relationship could be forged out of that.

Mr DAVID SHOEBRIDGE: Maybe we are coming to the point, through your question and answer with Ms Ward, that if this is going to work, there needs to be some kind of body—whether it is a committee or a task force, whatever it is described as—that brings together Government, employers and unions to make sure this actually gets implemented. You have got a willingness to be part of that.

Mr MOREY: We have got a willingness to be part of that.

Mr DAVID SHOEBRIDGE: Wage Theft Australia also says that if it is just going to be a process of getting the documents from the companies themselves and interrogating the wage documents, that is not really going to be very useful. That needs to be coupled with actually getting on and talking to the workforce: When did you normally arrive? How long did you work? What breaks did you have? Do you agree that needs to be part of it?

Mr MOREY: Yes.

Mr DAVID SHOEBRIDGE: Do you see any element in the Government's proposal that is going to actually create that?

Mr MOREY: No, and I would say the Federal structure around the Fair Work Act and the restrictions on right of entries to unions, who historically have gone into workplaces where they know there is wage theft, have been curtailed and that is one of the reasons why we have seen wage theft expand in Australia.

Mr DAVID SHOEBRIDGE: Because if it is all just paper audits, shuffling between the Feds and Revenue NSW, and they are not actually talking to the workforce, we are not going to pick up wage theft.

Mr MOREY: What I said at the start is that you can be paying your payroll tax and getting ticked off and yet still involved in wage theft underneath that.

Mr DAVID SHOEBRIDGE: So unless there is that willingness to step out and actually talk with people doing the work, this is all media releases and hot air but it is not going to change anything on the ground.

Mr MOREY: Not unless you have got people on the ground actually in workplaces talking to people and doing investigations, no.

The Hon. ADAM SEARLE: Isn't the fundamental issue to try to create a situation where, if you do the wrong thing, it is actually just much more likely that you will get caught? Leaving aside the issue of penalties, there has to be a realistic chance that people who are doing the wrong thing are going to be detected and caught.

Mr MOREY: That is correct. We believe there is a culture of "catch us if you can" at the moment.

Mr DAVID SHOEBRIDGE: I think the Bureau of Crime Statistics and Research has done some reports on that—that actually reduces offending if there is a higher likelihood of being caught.

Mr MOREY: Yes.

The Hon. NATALIE WARD: Thank you for your submission and your recommendations. It is interesting, though, that you do not oppose this bill completely. You just say, as I understand it, that it needs some further things around it. Is that generally fair?

Mr MOREY: I think this bill is basically dipping your toe in the water. It does not actually address the underlying issue of wage theft. In fact, it should probably be called the payroll tax theft bill.

The Hon. NATALIE WARD: Okay. Can we talk about the bill? Because you have talked about some other things that should be done. I understand those and thank you for those. The bill itself, though, at the moment, my understanding is that it is there to directly deal with what you are saying—if somebody wants to report wage theft, where do they go? The Fair Work Ombudsman? You are saying it does not have enough teeth. Does this not directly address your concerns?

Mr MOREY: No, because you are still waiting for either the Fair Work Ombudsman to identify somebody—so you are putting another step in the process—and the Fair Work Ombudsman is notoriously slow in getting anything done.

The Hon. NATALIE WARD: That is dual identification. Is it not the case at the moment that Revenue NSW cannot and is prohibited from identifying businesses directly? This bill seeks to address that so that it can pass information on. Surely that addresses your first concern.

Mr MOREY: That addresses the concern around payroll tax and, in dealing that, yes.

The Hon. NATALIE WARD: And that is one of the levers that Revenue does have.

Mr MOREY: It is one of the levers, yes, but it is not a disincentive to business. What the bill is trying to do around payroll tax—tick.

The Hon. NATALIE WARD: Right, okay. I just wanted to get that common ground to understand that you have no issue with that aspect.

Mr MOREY: No.

The Hon. NATALIE WARD: Because that is one of the levers we do have.

Mr MOREY: Yes, but it just does not go far enough in creating a disincentive to wage theft.

The Hon. DANIEL MOOKHEY: I think Mr Costa had something to say.

Mr COSTA: Yes, I would just like to add to that because I think there is some confusion about our criticism of the bill. We understand that the bill as it is will collect unpaid payroll tax from businesses that have been identified as participating in wage theft and have been caught by another agency or prosecuted by another individual for that. The problem that we have with the bill is that it seems to have been lodged as a way to prevent wage theft or to increase the penalties for wage theft by capturing payroll tax. What it does not do is anything to reduce the amount of wage theft that is occurring already. It purely adds just an additional penalty in collecting the payroll tax, which assists the Government for those people who have already been identified as underpaid.

Our criticism is that there is a lever available to the Government if it wishes to use it, which is to use its powers to collect payroll tax to actually go out and find a number of businesses that we know are engaging in wage theft that are being ignored by other agencies at the Federal level and are not being caught by other systems. So there was an opportunity to—and it seems in the name of the bill that combating wage theft was the initial intention but, actually, when you dig down into the bill, all it does is seek to recoup payroll tax from businesses that have already been identified by other agencies as participating in wage theft.

The Hon. NATALIE WARD: Can I posit a view to you about that precisely? And thank you for that comment because I think that is exactly right—it deals with a lever that is available. I think the proposition that you are making is that there is no legislative lever available in Revenue to do that. It does not have the capability to do that under current legislation.

Mr COSTA: Well, no. The Government has the ability—

The Hon. NATALIE WARD: I am sorry, just on Revenue, it does not.

Mr COSTA: Well, if you know that businesses are not paying payroll tax correctly, you have the ability to investigate that and to8 recoup that.

The Hon. NATALIE WARD: Just to be clear on that point, because it is important, Revenue NSW does not presently have any legislative ability to do that. It does not have that role to investigate businesses about whether their workers are being paid correct wages.

Mr COSTA: But it does.

The Hon. NATALIE WARD: That would require new legislation to empower Revenue to have that. That is what you are proposing.

Mr COSTA: I think where we disagree is that I am not saying it has the power to investigate wage theft; I am saying that it has the power to investigate payroll tax theft and, in essence, that will identify wage theft. So it could use the existing powers by employing more inspectors and by having a concerted approach to investigating payroll tax theft. You would have the ancillary benefit of reducing wage theft in the New South Wales economy. That power is available to the Government—

The Hon. NATALIE WARD: Do you say that exists under the existing Revenue NSW powers?

The Hon. DANIEL MOOKHEY: The Taxation Administration Act.

Mr COSTA: Well, it would have to exist because otherwise you would not have the power to collect your own payroll tax.

The Hon. NATALIE WARD: Yes, but detecting wage theft and mediating between parties—ensuring that the correct wages are paid—is not presently under their expertise.

The Hon. DANIEL MOOKHEY: No, that is not true.

The Hon. NATALIE WARD: Sorry, if I can hear from the witness, please.

Mr COSTA: Ensuring that the correct payroll tax is paid requires you to understand what the entitlement of wages are for those employees. It probably sounds a bit semantic and a bit pedantic but actually, yes, the Government does have the power to investigate what the correct wage is because it needs to know whether it is being paid the correct payroll tax.

The Hon. NATALIE WARD: Can I clarify that when you say "the Government", do you mean Revenue NSW?

Mr COSTA: Yes.

The Hon. NATALIE WARD: That is not my understanding.

The Hon. TAYLOR MARTIN: That contradicts Revenue's own submission to this inquiry.

The CHAIR: We are not debating the witnesses, so let him have the answer and you can you ask him a question.

The Hon. NATALIE WARD: I think it is important to get that right because Revenue says it does not have that power—

Mr COSTA: I disagree.

The Hon. NATALIE WARD: —and so what I am understanding is that your proposal is legislation be introduced to give Revenue NSW that power. Is that correct?

Mr COSTA: If they do not believe they have the power, I disagree; I think they do. But if they do not, and if it requires further legislation then definitely they should have that power. How you could run a department that is responsible for collecting payroll tax and enforcing payroll tax without the power to investigate whether the businesses paying that payroll tax are paying it correctly—I just cannot understand how you could have an organisation that says that.

The Hon. NATALIE WARD: I think the nuance—and I understand it is very fine but I think it is important—is that it does not have the ability to investigate whether businesses are paying the correct wage level and debate if there is a dispute and mediate that dispute. Revenue says it does not.

Mr MOREY: Yes, but to work out whether a business is paying the correct payroll tax, you have to know what they are actually paying their workforce so you would have to know whether they are paying to the award or to the enterprise agreement rate—they will have to look at that in order to calculate payroll tax, which they will then say has been appropriately paid or has been underpaid.

The Hon. NATALIE WARD: Yes, but Revenue NSW is really a collection agency, it is not an investigative body.

Mr MOREY: Yes.

The Hon. NATALIE WARD: I think that is the issue we are grappling with. Would that be correct?

Mr MOREY: Currently it is a collection agency—

The Hon. NATALIE WARD: Yes.

The Hon. ADAM SEARLE: It does prosecute.

The Hon. DANIEL MOOKHEY: It has the powers of investigation.

Mr COSTA: But it does not exercise—

The Hon. NATALIE WARD: But it is not an investigative body.

Mr MOREY: No, it is not using them.

The Hon. NATALIE WARD: It does not presently have that equipment.

The Hon. DANIEL MOOKHEY: It is not a prosecutorial body.

The Hon. NATALIE WARD: I am speaking to the witness.

The Hon. DANIEL MOOKHEY: I know, but you interrupt us.

The Hon. NATALIE WARD: It is my time to ask questions, actually.

The CHAIR: It is not, actually. It is free flowing time. Mr Mookhey and Ms Boyd have sought the call.

The Hon. DANIEL MOOKHEY: Just to quickly clarify this—because it is a valid form of questioning—currently, in order to facilitate its payroll tax, each year a business has to provide an annual declaration of its wages paid. Correct?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: And that is made to the chief commissioner—correct?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: And the chief commissioner then issues an assessment on the basis of the self-declared wages—correct?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: And all those powers are provided under the Taxation Administration Act 1996—correct?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: Is it the case that under the Taxation Administration Act the chief commissioner has the ability to audit the wage declaration from which the calculation is made?

Mr MOREY: Yes.

The Hon. DANIEL MOOKHEY: And, Mr Costa, when you make the point that that therefore gives them the power to check whether the wage declaration is correct, that is what you are referring to?

Mr COSTA: That is right.

The Hon. DANIEL MOOKHEY: And, equally, as a result of them being able to discover through that process that maybe the wages were incorrect, your argument is that that they can therefore pass that information to other government agencies?

Mr COSTA: That is right.

The Hon. DANIEL MOOKHEY: And that that could then therefore trigger further prosecutorial action by agencies that are not Revenue NSW. Is that correct?

Mr COSTA: That is correct.

The Hon. DANIEL MOOKHEY: And is that why you are calling for the offence of wage theft to be put into the Crimes Act so that therefore it can be actioned under that law?

Mr COSTA: That is right.

The Hon. DANIEL MOOKHEY: So, therefore, what you are basically calling for is Revenue NSW and potentially the police to cooperate?

Mr COSTA: That is right. It also just makes sense to us.

The Hon. DANIEL MOOKHEY: Okay, thank you.

Ms ABIGAIL BOYD: I wanted to touch very quickly on proposed section 83A and your comments in relation to the discretionary nature of that. I wanted to unpick what you would change about that section. Is it just a matter of taking the "may disclose" and making it a "must disclose" or are there other parts of that section that you would also amend or tighten up?

Mr COSTA: Sorry, could you repeat the clause that you are referring to?

Ms ABIGAIL BOYD: It is proposed section 83A. This is the permitted disclosures part of the bill, where we set out a bunch of situations where there may be a disclosure and then the Minister is tasked with putting together a bunch of guidelines that then tease that out. In your submission you mentioned about the discretionary nature there and you say it should really be an obligation.

Mr MOREY: Yes.

Mr COSTA: Yes, that is right.

Ms ABIGAIL BOYD: Is there anything else that you would tighten up about that section in order to try to make it better?

The Hon. DANIEL MOOKHEY: Do you think that should be done through guidelines maybe or should we do it through Parliament?

Mr MOREY: We just looked at it broadly, but anything that is more prescriptive rather than less prescriptive is much better. That is the approach we take. The problem with these areas of the law is you have guidelines, people make them up, they are not watertight and so people can get around them. So anything that is done should be contained in the legislation and prescriptive.

The Hon. DANIEL MOOKHEY: Should they be disallowable by Parliament if it is done by regulation and not legislation?

Mr MOREY: It is disallowable by Parliament, yes.

The Hon. DANIEL MOOKHEY: So at least that is the threshold.

Mr MOREY: There should be a common set of principles in the legislation that the parties can come together on that basically says, "It is not okay to rip the Government off, it is not okay to rip workers off, and we will put some sensible legislation together to stop it."

The CHAIR: Thank you very much for joining us today, for your submission and for your evidence. We appreciate it.

Mr MOREY: Thank you.

Mr DAVID SHOEBRIDGE: Do we have any questions on notice?

The CHAIR: Yes, 48 hours.

Mr DAVID SHOEBRIDGE: If you are looking at the current powers under section 72 of the Tax Administration Act and whether or not they could be used for the purpose of assisting investigating wage theft, or if they need to be expanded, could you take that on notice?

Mr MOREY: Yes.

Mr DAVID SHOEBRIDGE: Thanks.

(The witnesses withdrew.)

MICHAEL FRASER, Co-founder, Director, Wage Theft Australia, before the Committee via videoconference, affirmed and examined

MADDISON JOHNSTONE, Co-founder, Director, Wage Theft Australia, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome to our next witnesses. Thank you for joining us via Webex, Mr Fraser and Ms Johnstone. You are entitled to make a brief opening statement if you wish.

Ms JOHNSTONE: Sure. Thank you for the opportunity to make a submission and appear at this inquiry. To cover off some questions we are normally asked, we would like to start by saying we are self-funded, grassroots advocates. We are not affiliated with unions, parties, governments or any other organisation. We fund ourselves through consulting our proprietary software that collates government data and through preparing deep dive research reports into companies that are on the ASX or which intend to list. We are not anti-business; we believe that companies deserve to operate on a level playing field. We have done a lot of work in the franchising sector, but we are also not anti-franchising. Unfortunately, industry associations continue to turn a blind eye to this conduct, and franchising remains a hot topic and is possibly hugely relevant in terms of payroll tax.

Mr Fraser was instrumental in helping to expose 7-Eleven for systemic wage theft, which saw over 4,000 workers be back paid over \$170 million. He then helped expose Domino's Pizza and Retail Food Group, among others, for systemic wage theft and franchising misconduct. We know employers make mistakes, especially small businesses, and our work is primarily focused on large or ASX-listed companies that also have the experience, resources, systems and time to prioritise paying their employees correctly. If they can work out how to minimise their tax obligations within the law, which is their right, they can navigate the awards system.

As wage theft is still not a crime in New South Wales, like it is in other States, every reasonable opportunity to deter employers from underpaying workers is productive. When the Government announced support for making wage theft a crime in Australia, it was not lost on us that large companies like Woolworths suddenly found underpayments and self-reported. This is proof that even just announcing the possibility of tougher penalties and taking serious steps in making this a reality can force large companies to take their payroll obligations seriously, and perhaps even prioritise them.

It would be beneficial to workers if tax officers were enabled to pass on information to the Fair Work Ombudsman. The problem that we see is ensuring Fair Work is properly resourced, trained, and compelled and asked to act on this information. Unfortunately, for whatever reason, we find that their work has been ineffective in some of their investigations. This has sometimes meant journalists and advocates like ourselves are the ones uncovering the systemic underpayments. Sometimes Fair Work has already been made aware but there was no outcome, or no substantial outcome. Just to be clear: We are not lawyers, or payroll or tax experts.

The CHAIR: Thank you and thank you for your submission.

The Hon. DANIEL MOOKHEY: Thank you, Mr Fraser and Ms Johnstone, for your appearances this morning. When was your organisation founded?

Ms JOHNSTONE: Mr Fraser started the advocacy work back in 2015 but we did not formalise a business structure until around 2017.

The Hon. DANIEL MOOKHEY: Since the 2015 inception and from 2017 onwards, is it the case that you played a role in exposing the underpayments that took place at 7-Eleven?

Ms JOHNSTONE: Yes, that was Mr Fraser's work.

The Hon. DANIEL MOOKHEY: Mr Fraser, what work did you do?

Mr FRASER: I actually looked into 7-Eleven for about 2½ years. Once I became aware of the issues in a store, a worker told me that it was systemic and so I started visiting stores around Australia. I ended up visiting about 60 stores and finding that all the staff were telling me that that was the model. Then what I ended up doing was starting to write to the company and getting told, "We are not interested. Go away. Leave us alone. You will not be talking to the CEO." That kind of thing. After a while I actually went to a journalist, Adele Ferguson, and essentially once Adele got involved it was supercharged and she did her own big investigation.

I worked alongside that I think for about eight months, and then there was a *Four Corners* and then after that there was a lot of work that happened. What happened was, the lawyer that was originally looking to do the work for the workers wanted to represent the franchisees, so I had to take the workers to Maurice Blackburn, send the franchisees to the other lawyer and then I briefed the Fels Wage Fairness Panel and did a lot of stuff in the

background and worked with the workers for several years after that. Plus we worked with universities and various people in government to ensure everyone was back paid as best we could.

The Hon. DANIEL MOOKHEY: Did the Fair Work Ombudsman's role take place after all that work was done by you and others?

Mr FRASER: They were doing bits and pieces, and I think they got wind of what I was doing in Brisbane. Because it was weird, when I was hitting the streets in Brisbane—which I actually had an unnamed individual who was helping me, just a migrant worker, through Brisbane. We spent four nights there and I think Fair Work got wind of that and started doing spot raids through Brisbane at the same time. Fair Work was doing bits and pieces and had done things in the past.

But a big challenge that I had—and this is no disrespect to Fair Work—is that Fair Work tend to go and plan with a company. It will meet the company and talk with senior management and it seems more of an arrangement that everybody is happy with as opposed to knocking on the door, hand over your files or telling them once it has completed its investigation. It enables, I suppose, the hiding of information or not revealing the true story, and Fair Work can also be in a situation where it ends up becoming quite friendly, through no fault of its own, because of the constant relationship it has with managements. It loses its objectivity.

The Hon. DANIEL MOOKHEY: Mr Fraser and Ms Johnstone, between the two of you, you repeated effectively the same investigations in respect to Domino's, Retail Food Group, Michel's Patisserie and others. Is that correct?

Ms JOHNSTONE: Yes. With Domino's it was a similar story. We went around Australia and visited around 70 stores and found that the network was littered with underpayment as well. Then we did the same later that year with Retail Food Group.

The Hon. DANIEL MOOKHEY: Through the course of all these investigations you have identified certain features of franchise models which create circumstances that lead to wage theft. Is that correct?

Ms JOHNSTONE: Yes. Sometimes with some franchise models—

The Hon. DANIEL MOOKHEY: I just want to put two questions to you so you can answer them both together. Can you take us through what you found? Are there economic design features of franchise networks that lead to wage theft? Can you also take us through what you have learnt about the strategies that franchise and franchised stores do as they relate to tax and tax evasion as a result of that economic design?

Mr FRASER: I suppose one of the things that we have observed with franchising is that typically there is a thing where a store—picture this: Franchisors often hold the head lease, so they hold the liability for that franchise. What happens is they will have a store that is not performing with a franchisee in it and the franchisee will go into liquidation, and often because the franchisor takes a lot of the profit and the franchisee cannot survive. They end up going into liquidation and actually having a large amount of outstanding debt, often half a million or whatever where \$100,000 might be to the ATO. What the franchisor will do is, because they hold the head lease, they are now responsible to pay that debt, maybe several thousand a week. They will actually often gift it to another franchisee to shift that liability off their books or it might be, "You pay us \$50,000", and over a period of time. It will be a small sum of money or they may sell it for full price. They know that business will not perform.

That is called churn—selling a store that will not perform over and over again. What that does in terms of how it affects payroll tax from our understanding is that they would have to run that store otherwise and employ all those staff until the end of that lease or shut the store down. They are shifting all that payroll tax obligation over off their books to an individual franchisee, avoiding the ability to have to pay payroll tax and also not having to pay the lease. That is a very common scenario, gifting stores or selling them for a dollar. We saw it recently with a Guzman y Gomez franchise, a Mexican chain. The store went into liquidation; they took it for a dollar. It was in liquidation before they had got the store for \$1. There is a new guy back in there. They do not have that responsibility anymore; it is someone else.

Mr DAVID SHOEBRIDGE: First of all I want to thank you both for the work you do. It has been really remarkably important in getting this national attention on wage theft, so thank you. Could I ask you about how you do it? Obviously you do not start with a set of audited books. You start with talking to the workforce. Is that where you investigations start?

Ms JOHNSTONE: Often we get tipped off, and that is why it is so good to sort of have media involved at some point. It is not always about naming and shaming. It is often about: By having some sort of a public presence, it means that we can get tipped off about other companies that are also doing the wrong thing. It often just starts with one worker coming forward, and then we need to determine whether it is just one sort of instance of bad management or something has happened, something has gone wrong. But our further investigations will

then reveal whether it is systemic and that can often mean that we are visiting stores or just trying to reach out to other workers around. It generally starts with talking to workers.

Mr FRASER: We do not treat what we are told as gospel. A lot of people would think we hear a bad story and we go, "Yes! Give me that bad story. I do not care about the facts." But we look into people's litigation history as an individual. We just check into people to make sure that it is not a set-up from the company trying to trick us, that the person is legitimate, that their claims are legitimate. Because often times they think they have been underpaid and when you actually look at it, you realise if anything the employer has been quite good to them and they did not understand. We are very critical of anyone that comes forward to ensure that we are getting the best data.

Mr DAVID SHOEBRIDGE: But it starts with hearing stories, having workers have somewhere they can trust to go and make disclosures about underpayments. That relationship of trust and knowing there is someone who will listen to them is a critical starting point. Do you agree?

Mr FRASER: Yes.

Ms JOHNSTONE: Yes, in a way, and sometimes they have already been to others. They might have already been to a lawyer or Fair Work and they just have not found a resolution. We are happy to sort of pick up that workload.

Mr FRASER: It is very common for someone to come to us and say, "I went to Fair Work. I am being underpaid, and Fair Work told me to go to a lawyer." Or, "Fair Work sat me down with the person exploiting me in the same room and asked me, 'Was I being underpaid?'" What were they going to say? So they say, "I was in a situation where I could not speak up so my claim went nowhere." It is disturbing.

Mr DAVID SHOEBRIDGE: Have you ever heard of the New South Wales Government or any part of the New South Wales Government ever assisting a worker?

Mr FRASER: No, but I suppose we are in Queensland. We are not as plugged in. But, no.

Mr DAVID SHOEBRIDGE: But part of your investigations is looking at these national franchises. You have spoken to the workforce in New South Wales. Is that right?

Mr FRASER: No, I do not think we have. We have spoken to workforces, yes, absolutely.

Mr DAVID SHOEBRIDGE: Would it be fair to say that one committed journalist in the form of Adele Ferguson has been more effective than the Fair Work Ombudsman in trying to raise this issue?

Ms JOHNSTONE: In some of our investigations we have found that to be the case. I do not know everything that it is looking into. I do not know the red tape it has to face. I do not know what barriers it faces internally. I am not sure about its situation, but we have found that when looking at companies like 7-Eleven, Domino's, Retail Food Group, there has already been complaints to the regulator about wage theft and either nothing has happened or very little has happened and you sort of need a quality journalist to supercharge that and highlight the inefficiencies. Maybe then there can be a resolution that might involve Fair Work or might not, and that is where the back pay panel came in with 7-Eleven. With Domino's it was a little bit different unfortunately. It really depends. Being outsiders, we cannot see all the struggles that they might face, but we have found that, just through own investigations, sometimes having a journalist is very helpful in supercharging the issue.

Mr FRASER: I think the challenge that we have is that we cannot clone Adele Ferguson. Because if we had more Adele Fergusons we would be uncovering a lot more issues every day because the woman does so much great work. She cannot write a thousand stories a week but there are so many stories to write.

Mr DAVID SHOEBRIDGE: I would have difficulty amending the bill to require a cloning of Adele Ferguson anyhow.

The Hon. NATALIE WARD: Chair, if I may? I note the time. Thank you both for your assistance to the Committee today. I appreciate the work that you have done in other areas but can we just turn to the actual bill under consideration by the Committee today? I have read your submission but I cannot seem to clarify what proposals you have for the bill under consideration. Do you oppose the bill, do you support it or do you propose amendments to it?

Mr FRASER: We got very short notice on this. We are not tax experts. I think, from our point of view, what our thoughts were is that any bill should take into consideration the challenges of dealing with companies that are not forthcoming with information. I suppose the experience that we can offer is that the challenges that are going to be faced with any bill is what happens to companies that are not forthcoming with information, who hold back information from the auditors, and that there need to be mechanisms in place for the revenue department

to actually not just rely upon what is handed to them by the company but to dig deeper, and if there is any mechanism that can be put in place to just say, "Don't trust what you have been by a centre." That is the guts of it.

Ms JOHNSTONE: On that, we heard a little bit with the last witness saying about how they might not have the ability to actually do any investigations into wage theft and I think that it would be very helpful if they could because sometimes they can only work on the intel that they have. If they do not have the intel they cannot investigate.

The Hon. NATALIE WARD: Thank you. I have got very limited time. I understand what you have said about that and you have said that in your submission, thank you, but I am interested in the actual bill before us, which is seeking to do that. It is seeking to use the lever that Revenue has presently, which is payroll tax, to assist to be able to provide that information to the Fair Work Ombudsman. Do you agree that that is a good step? I understand it is not entirely what you and others seek, but it is a good step. Can we agree on that as common ground?

Mr FRASER: Yes, you share information, absolutely.

Ms JOHNSTONE: Yes.

The Hon. NATALIE WARD: And you do not oppose or propose amendments to the bill in its current form. Is that correct? Is that a fair assessment?

Mr FRASER: We have a thing where we do not try and talk about legals because we are not lawyers, so we do not step out of the scope of our practice. Sharing information is good, but just do not trust everything that the company gives you. So if there are going to be mechanisms for that to ensure that you actually get all the data before you make a decision on what the tax liability is.

The Hon. NATALIE WARD: Can I just understand—it is not a criticism; I am just trying to understand—you are not legally qualified and you do not profess to be? You say you are researchers, is that correct?

Ms JOHNSTONE: Yes.

Mr FRASER: Yes.

The Hon. NATALIE WARD: And you are in Queensland.

Mr FRASER: Yes.

The Hon. NATALIE WARD: You have set this up as a research body—you said "practice". Is there some qualification in it?

Mr FRASER: I did not even go to high school, so that is my qualification.

The Hon. NATALIE WARD: School of life.

Mr FRASER: We just do research.

The Hon. NATALIE WARD: Just to understand it clearly: the present powers of Revenue NSW are—well, let us talk about what it is not; it is not an industrial relations investigator, it is not a regulator of industrial relations or it does not presently have the capability to investigate whether businesses are paying workers their correct wages or take enforcement action. Do we understand that to be correct? Revenue does not currently have those powers?

Ms JOHNSTONE: Yes.

The Hon. NATALIE WARD: So the powers that it currently has are in relation to payroll tax and it can currently, as this bill seeks to do, extend what it can do to prompt investigations in relation to that aspect that is within its remit. Do you support that in this bill?

Mr FRASER: Yes, I think so. Sorry, it was just a bit faint. The thing is that what we think the Tax Office should be doing is speaking to the workers prior to doing the audit.

The Hon. NATALIE WARD: Sorry, when you say the Tax Office, do you mean Revenue NSW or do you mean the Australian Tax Office?

Mr FRASER: Yes. The reason being that you are going to be relying upon what is coming from the company. The company, if they are doing the wrong thing they are not going to volunteer that to you. So speaking to the workers first—which does not take a lot of time to go and chat to a few people—gives you an understanding

of the environment, and then once you get that data I would guarantee that you are going to get more tax from every large business if you speak to the workers first, because you will get the full picture.

The Hon. NATALIE WARD: We do not want more tax, we want the right amount of tax.

Mr FRASER: I suppose you are going to get the right amount of tax because you are going to get all the unpaid components of everybody's day when you know what their day is like and what is not actually being declared to the Tax Office to be able to get the right amount of tax as opposed to less tax.

The Hon. NATALIE WARD: And this bill recognises that a State tax authority might acquire information about underpayment of wages and seeks to arm that authority with the tools to ensure the payroll tax liabilities are not avoided. That is correct, is it not?

Ms JOHNSTONE: That is our understanding, yes. But we also want to stress that they need to be able to get everything, get all the underpayments so that they know exactly how much payroll tax is owed—so the 15 minutes unpaid before the shift and the seven minutes after, that kind of thing.

The Hon. NATALIE WARD: The wage theft bill nationally fell over after a last-minute deal between Labor and the crossbench. Do you have a view about whether there should be a national bill?

Mr FRASER: This is probably a long answer, but we had conflicting views about what we felt about that. I suppose we always take it back to our concern is that, for example, we do not want small businesses getting caught up in the confusion of not being able to work out the award system—like, innocent people getting caught up within the States and getting in trouble—and when it comes to large companies, we do not want them to be able to say, "I didn't understand it all, but thanks for letting me know and now we will back pay everyone and not get into any trouble." Again, what we always come down to is that you need to be able to ask the right questions of a company and not just trust what the company is telling you. Some of the biggest things that we see are things like the abuse of salary systems where people are on a 38-hour salary, working 60 hours a week and are not paid for those additional hours. That stuff often does not get picked up in audits because the manager is not clocked on for those additional hours.

The Hon. NATALIE WARD: I think that happens in the Parliament as well. I do not mean to cut you off; I understand exactly what you are thinking. We want to incentivise businesses to do the right thing, do we not? Is that not the purpose of this after all, that they are incentivised to do the right thing and that, hopefully, will drag them to the table if they are not already there? Do you agree with that?

Mr FRASER: Yes.

The Hon. ADAM SEARLE: Just on that, Queensland and Victoria have taken the step of criminalising wage theft in their State crimes legislation. There is no reason why New South Wales should not do that, to provide an additional deterrent to companies, particularly big companies, from doing the wrong thing.

Mr FRASER: I do not think so. From our point of view, we speak to whistleblowers of varying kinds almost every day, and to give you guys a sense of what criminalising wage theft does, we are hearing from whistleblowers that companies are doing little, quiet audits and back pays that they have been running for years. They know they have been underpaying for years but they are now just fixing things up—not necessarily in the past, but going forward. So there is a lot of that happening in companies because there is a fear of getting caught. That in itself is an amazing outcome. And 7-Eleven in a way triggered that, when businesses unrelated to 7-Eleven started to do the right thing out of fear of being caught. So it is an important thing.

The Hon. NATALIE WARD: So if there had been a national wage theft bill which was on the table, that would have dealt with the national 7-Eleven and other national franchises issue, would it not?

Mr DAVID SHOEBRIDGE: Depends on the nature of the bill, surely.

The Hon. NATALIE WARD: I am asking the witness. There was an attempt to have a national wage theft bill, which fell over at the last minute because of a last-minute midnight deal between Labor and the crossbench, who did not support it. That would have effectively dealt with the national issue, would it not?

Mr DAVID SHOEBRIDGE: It depends upon the nature of the bill.

Mr FRASER: I think so, yes, depending on what wriggle room the company finds. In theory, yes.

The Hon. NATALIE WARD: Better than no bill whatsoever. Correct?

The Hon. ADAM SEARLE: Did the Government not withdraw the bill.

Mr DAVID SHOEBRIDGE: I think the Coalition withdrew the bill because there were amendments to make it—

The Hon. NATALIE WARD: Because of a midnight deal between the crossbench and Labor, who did not support it.

The Hon. ADAM SEARLE: But none of this relates to the New South Wales bill that we are discussing.

The Hon. NATALIE WARD: So now we are talking relevance.

Mr DAVID SHOEBRIDGE: There were amendments to make it relevant.

The CHAIR: We are practically out of time. Does anyone have any final questions of these witnesses?

Mr DAVID SHOEBRIDGE: No. I just want to thank them again for the work they do.

The Hon. TAYLOR MARTIN: I want to thank them as well.

The Hon. NATALIE WARD: Indeed.

The Hon. ADAM SEARLE: Absolutely—for shining a light on dark places.

The CHAIR: Thank you so much for your time this morning and for your submission, we appreciate it.

Mr FRASER: Thank you all for the work that you guys do. It is a team effort.

Mr DAVID SHOEBRIDGE: We have not fixed the bill yet.

(The witnesses withdrew.)

(Short adjournment)

SCOTT JOHNSTON, Deputy Secretary, Chief Commissioner of State Revenue, Revenue NSW, sworn and examined

CULLEN SMYTHE, Commissioner of State Revenue, Revenue NSW, sworn and examined

The CHAIR: Welcome back, everybody. Thank you for joining us. Thank you to our witnesses from Revenue NSW, who are here for this next session. You are welcome to make a brief opening statement, if you wish.

The Hon. DANIEL MOOKHEY: Just prior to that, Chair, can I formally table those documents and formally ask that the tendered bundle be provided to the witnesses ahead of them making their opening statement?

The CHAIR: Sure.

Mr JOHNSTON: Thank you, Chair. I will make only a brief opening statement. The Tax Administration Amendment (Combating Wage Theft) Bill 2021 is before the Parliament. Revenue NSW welcomes the opportunity to discuss elements of the bill and answer questions. Our purpose in making a submission was simply to give some additional context to the bill's measures by highlighting what a taxation authority can and cannot do in this space. Revenue NSW recognises that wage underpayment is a serious issue and is keen to play a role in tackling it. We have certain powers and capabilities that we can use in deterring wage theft, and this bill reinforces the State's ability to leverage tax and functions and powers of a taxation authority in encouraging employers to do the right thing by their workers.

Our primary role is to assess whether employers are paying the correct tax, based on the wages that they are paid. It is not to actively monitor whether employers are paying their workers the right wages; that is an industrial role that is well outside our field of operations. However, where we become aware that an employer has paid incorrect wages and that underpayment may have resulted in that employers payroll tax liability being reduced, then we will use our powers to ensure the right amount of tax is paid. This bill helps us to achieve that in a number of ways. Thank you, Chair. That concludes my statement.

The CHAIR: Thank you. We will open it up for questions and we will start with the Opposition.

The Hon. DANIEL MOOKHEY: Thank you, Chair. Firstly, Chief Commissioner and Commissioner, thank you for your appearances this morning. As I was saying to you prior, I have done everything in my effort to make sure that any money I owe you personally is paid in full.

Mr JOHNSTON: Much appreciated, Mr Mookhey.

The Hon. NATALIE WARD: Is there something you want to share?

The Hon. TAYLOR MARTIN: Is that a disclosure?

The Hon. DANIEL MOOKHEY: Let me know. I think I parked somewhere I shouldn't have six weeks ago.

The CHAIR: Admit nothing!

The Hon. DANIEL MOOKHEY: Before today's hearing, I made sure—

The Hon. NATALIE WARD: Is that an early guilty plea?

The Hon. DANIEL MOOKHEY: I admit nothing. Chief Commissioner, in your submission you say that your expertise and capabilities lie in conducting compliance checks and audits, amongst five that you list. Do you see that?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: I just wanted to ask you some questions about that insofar as it relates to cases of wage theft or wage underpayments as well. I have just tabled a series of documents that I provided to you that were produced to the upper House pursuant to standing order, so you have the context.

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: These are all public documents; there is nothing in here which is confidential or private for any matter. They have all gone through the upper House processes, just to be clear about the context. I just want to ask you about some of the matters. If you follow along, you can see at the top of each of the documents that they are numbered. If you see, at the very beginning there is A1—

The Hon. NATALIE WARD: Sorry, do we have these documents?

The Hon. DANIEL MOOKHEY: A copy has been provided to the Committee.

The Hon. NATALIE WARD: Could I have a copy, please? I don't know what you are talking about.

The Hon. DANIEL MOOKHEY: They're in that folder there, for Committee members.

The CHAIR: They are just organising copies.

The Hon. DANIEL MOOKHEY: Perhaps we can just provide the Committee copy to Ms Ward.

The Hon. ADAM SEARLE: For the members of the upper House, these have all been produced pursuant to Standing Order 52.

The Hon. NATALIE WARD: Yes. Sorry, I am not trying to be difficult, but you are posing questions to the witnesses and I have no idea what you are asking about. This is the bundle?

The Hon. BEN FRANKLIN: It is also difficult for people on Webex, too, if we don't see them.

The Hon. DANIEL MOOKHEY: Fair enough.

The Hon. NATALIE WARD: How many documents are here?

The Hon. DANIEL MOOKHEY: Quite a few.

The Hon. NATALIE WARD: And these have just been given to the commissioner now?

The Hon. DANIEL MOOKHEY: Yes.

The Hon. ADAM SEARLE: They have all been produced by State Revenue to the upper House.

The Hon. DANIEL MOOKHEY: They are actually Revenue NSW's documents.

The Hon. NATALIE WARD: Alright. Just for the record, I have some concerns about giving a ream of documents to a witness on a moment's notice. I think that is a little bit unfair.

The Hon. DANIEL MOOKHEY: If you wish to take a point of order, you can.

The Hon. NATALIE WARD: Just for the record, I think it is a difficulty and not something we should encourage.

The CHAIR: We will work through them.

The Hon. ADAM SEARLE: We will just work through. We are conducting this inquiry in short compass.

The Hon. NATALIE WARD: I am happy to work through it, but I think it is quite unfair to give witnesses a ream of documents and ask questions about them.

The CHAIR: We will work through each one. Of course witnesses are entitled to procedural fairness. If there is anything as we go through, then we will deal with it.

The Hon. NATALIE WARD: Okay.

Mr DAVID SHOEBRIDGE: But, to be clear, can I make a couple of short observations? Members are not required to provide copies to all Committee members—

The CHAIR: No, absolutely.

Mr DAVID SHOEBRIDGE: —although I think they are trying to assist in this case. Quite often you will find a ream of documents provided to a witness, who is then taken to various elements in it. This is all standard practice.

The CHAIR: All of it is within the standing orders, which is why we will proceed. We will deal with things as we go, if something comes up. There are processes.

The Hon. NATALIE WARD: Could I just respond, Chair, and say that I think it is unfair on the hop for a witness? I have just made that point—

The CHAIR: Noted, but it is within the standing orders. It is important that that is also on the record.

The Hon. DANIEL MOOKHEY: Unless someone is taking a point of order—

The CHAIR: We are now going to use up time, so we need to move on.

The Hon. NATALIE WARD: Could I just finish my sentence? We have a procedural fairness motion for the purpose of providing procedural fairness.

Mr DAVID SHOEBRIDGE: Correct. This happens, the process of giving—

The Hon. NATALIE WARD: Sorry, you cut me off, but you let him respond.

The CHAIR: No. I have said we need to move on because we are now chewing up time.

Mr DAVID SHOEBRIDGE: The process of giving bundles of documents to witnesses—

The Hon. NATALIE WARD: Well then, allow me to respond without being spoken over every single time.

The Hon. DANIEL MOOKHEY: I will take a point of order, Chair—

The CHAIR: There are no responses. There is no point of order. I have already made it clear that this is within the standing orders, so let's move on.

The Hon. DANIEL MOOKHEY: Thank you, Chair.

The Hon. NATALIE WARD: Well, I think it is a very bad practice.

Mr DAVID SHOEBRIDGE: It happens in court every day.

The Hon. DANIEL MOOKHEY: Can I just take you through some of those documents, if possible? Can we just start with document A1? Can you see that? That is a media report about Woolworths underpayments.

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Can you see that?

Mr JOHNSTON: Yes, I can.

The Hon. DANIEL MOOKHEY: And you are aware that Woolworths has admitted to what they say is an inadvertent underpayment to the magnitude of \$390 million?

Mr JOHNSTON: I can see that, yes.

The Hon. DANIEL MOOKHEY: Can you take us through what steps Revenue NSW has taken to investigate that \$390 million underpayment?

Mr JOHNSTON: To a point, while these are our documents within here, it is very difficult for us to give operational context to every action that we are taking. This information is not new to us and, as you would have seen in many of the documents in the Standing Order 52 that we provided, we have ongoing discussions and investigations with a whole range of businesses, including this one. To the point of what we are working through when we talk about payroll tax, that has to work across the country with the harmonised settings. And so, we work with other States in this endeavour, as well, which provides complexity. It gives us harmony across the decisions across the country, but it also provides some challenges around moving through it quickly. To a point of understanding this—yes, we are well aware of it and we continue to pursue it. The specific actions—I would not have that information at front of mind.

The Hon. ADAM SEARLE: Could you take that on notice?

Mr JOHNSTON: I can take that on notice to give more detail, yes.

The Hon. DANIEL MOOKHEY: Thank you, Chief Commissioner. As a result of this, did you initiate a compliance audit after the issues with Woolworths emerged?

Mr JOHNSTON: Yes, we did.

The Hon. DANIEL MOOKHEY: When was that audit initiated?

Mr JOHNSTON: I would have to take the date on notice.

The Hon. DANIEL MOOKHEY: And you are confident that took place after this came to light?

Mr JOHNSTON: Again, I would have to take that on notice, but noting I am talking about our regular practice where we have information provided from other sources, such as the media or Fair Work, et cetera. We investigate this—that can then lead to an audit. Now, this is a very big company that has a presence across the country and we would continue to be looking at and closely working with them to ensure they are paying the right payroll tax.

The Hon. DANIEL MOOKHEY: Could I just take you to document A2, if that is possible?

Mr JOHNSTON: Sure.

The Hon. DANIEL MOOKHEY: This is an audit report into Woolworths that was produced in April 2020 to the upper House. But, in fact, it is a document that I think was created—down the bottom you can see on page 718 or 24 that it was actually a document that was completed on 23 May 2017, pretty close to four years to the day, actually. According to Revenue NSW, this is the last time Woolworths was audited—certainly up until April 2020, to be fair. Otherwise you would have had to produce any subsequent audit report to the upper House, and this is the last one that was produced. Is that a fair interpretation of the document?

Mr SMYTHE: Not having had a chance to go through it, we cannot confirm that, but there is no reason to disagree with your conclusion.

The Hon. DANIEL MOOKHEY: Got it. Thank you, Commissioner. Can you turn to page 695 or 1 of A2? Do you see that?

Mr JOHNSTON: The first page of that? Yes.

The Hon. DANIEL MOOKHEY: It says here, "Woolworths Limited and its associated entities are one of the largest employers in Australia and it pays in excess of \$20 million in payroll tax annually."

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: So we all agree that they are a massive employer in New South Wales?

Mr JOHNSTON: Yes, I agree.

The Hon. DANIEL MOOKHEY: It is therefore fair to assume that the \$390 million underpayment—a lot of that may have taken place in New South Wales. You do not disagree with that?

Mr JOHNSTON: No, I do not disagree.

The Hon. DANIEL MOOKHEY: Fair enough. Can you turn to page 699 or page 5, depending on which numbering you wish to follow?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Do you see there is a summary of findings there—a table?

Mr JOHNSTON: Yes, I can see that.

The Hon. DANIEL MOOKHEY: And do you see "wage reconciliation, found to be correct, Y/N"?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Do you see "N"?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: It says here that there was a large clerical error in the spreadsheet of \$15 million. Do you see that?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Can you now turn to page 701 or page 7? It states:

Details of Wage Findings

The following section outlines the wage findings for the period under review.

Paragraph 1 states:

1. The main issue identified is the significant over declaration in gross wages as a result of human clerical error. The client has (as a result of copy/paste error in Excel) duplicated the gross wages paid to Executives in August 2014. The over declared amount was—

\$15.5 million approximately—

resulting in a payroll tax **refund of \$840,220.**

Do you see that?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: It got a refund as a result of this audit. That was the audit result. Is that agreed?

Mr JOHNSTON: That is what is there, yes.

The Hon. DANIEL MOOKHEY: I think that after you netted it all, the actual refund it received was \$621,000 in 2016. And then, equally, the other parts of the group that were audited, as a part of what I think you call Project Large, was the Masters Home Improvement, which got a refund of \$170,000; the Woolworths management arm, which cost \$67,000; and HP Distribution, \$31,000. You might not be able to, but unless you disagree—I understand that you might not be in a position to agree to all that now, but that is my summary of your documents. In total for the Woolworths Group, the audits conducted in 2017 into the prior tax year have resulted in close to \$1 million of tax refunds, which we do not begrudge. If that is what it is entitled to, then that is what it is entitled to. But the issue is there is no evidence in this audit that anyone actually checked whether or not the wages were being paid. Is that a fair summary?

Mr JOHNSTON: I would have to read the full document and other documents to give a fulsome response to that. What I would say in respect to refunds is—our role is to ensure that people are paying the right amount of payroll tax, and we continue to work through that progressively each year. The pace of investigations around underpayments et cetera, due to its complexity nationally, means that sometimes these can take further time. While a refund may have been paid at this point, that does not mean that further efforts will not be undertaken. If they have paid insufficient payroll tax, we will still continue to pursue that strongly.

The Hon. DANIEL MOOKHEY: I accept that, Chief Commissioner, but this is from a point in time. The problem is that there is no evidence since that point in time that any further compliance activity has been undertaken by Revenue NSW. Has any further compliance activity taken place since April 2020 into Woolworths, since the date of production of these documents?

Mr JOHNSTON: I would have to take that on notice to give the right response, outside of the Standing Order 52 order, in relation to this business but we continue to pursue these—

The Hon. DANIEL MOOKHEY: What I am particularly—

The Hon. NATALIE WARD: Let him finish.

The Hon. DANIEL MOOKHEY: Sorry, please finish.

Mr JOHNSTON: This does take time—and I know that is one of the criticisms of how we can work within this setting—but we maintain vigilance on trying to do this. What is important to me and to Revenue is that we follow that due process in the right way, working with our colleagues in the other States as well—because Woolworths and others roll across the country—so we get to that landing where we have the right point. I will come back with a response about that in the right setting.

The Hon. DANIEL MOOKHEY: I appreciate that, Chief Commissioner. Of course I accept that Revenue NSW has to follow due process. It is very important that the collection agency always follows due process. There is no disagreement about that. If you can, on notice, come back and say whether or not any additional repayments from Woolworths resulted from a Revenue NSW investigation or an updated declaration from Woolworths as part of its remediation project, that would be useful knowledge.

Mr JOHNSTON: Okay.

The Hon. DANIEL MOOKHEY: If it is okay with my colleagues, I have another case study to take you to.

Mr DAVID SHOEBRIDGE: I have one question on this before you move on. Mr Johnston or Mr Smythe, did you ever use your powers under section 72 of the Taxation Administration Act 1996 to issue notices and find information in relation to this matter?

Mr SMYTHE: We would have to that on notice. The reason I say that is section 72 is only ever utilised where—it is not a first step. Usually we would ask for information in any audit, and if people are not forthcoming that is when we would look to pursue a section 72 notice. That is a matter of general practice. In this specific instance that is something that we would need to take on notice.

Mr DAVID SHOEBRIDGE: Have you used section 72 to get information at any point in the past two years where there has been concern about an underpayment of wages? Has it been used at all in the past two years?

Mr SMYTHE: That is something that we would need to take on notice in that specific instance. The reason being, that is an operational decision that is made by the auditors and their managers as part of any ongoing investigative activity.

Mr DAVID SHOEBRIDGE: There is nothing in the Act that says there are a whole lot of preconditions to the exercise of power under section 72.

Mr SMYTHE: That is correct.

Mr DAVID SHOEBRIDGE: Why do you have such a constrained use of it?

Mr JOHNSTON: It would be an operational decision about whether we are receiving the correct information that we feel we need to make a judgement around payroll tax obligations. We will come back to you about how we have used it in the past couple of years, but if there is no need for us to invoke that ability we will not. We will take it on notice and come back to you, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Have you spoken with a Woolworths worker to work out whether or not what Woolworths is telling you is reflected in the actual work hours and the work history of any Woolworths worker?

Mr JOHNSTON: I would say the answer to that would be no. We are a revenue collection agency. We are not set to consider the industrial settings that they work within, so it would be no.

Mr DAVID SHOEBRIDGE: But unless you know the right wages have been paid, you cannot tell whether the right payroll tax has been paid, can you? It is a horse-before-the-cart thing, is it not? You have to work out what the right wages were.

Mr SMYTHE: If I might, the way the Payroll Tax Act works—

Mr DAVID SHOEBRIDGE: I have it in front of me.

Mr SMYTHE: —tax is calculated on the wages that are paid or that are payable. So if an organisation is telling us that it has paid an amount, then we will levy tax on that amount, assuming that those amounts fall within the parameters of the Payroll Tax Act. If amounts are payable and we become aware of that through our audit activity, we calculate payroll tax amounts in respect of that. Whether or not a company has actually made payments is not something that always factors in. For example, if a company said that its monthly wage bill was \$5 million, we would calculate, as a starting point, on that \$5 million. The fact that it may have paid only \$3 million—

Mr DAVID SHOEBRIDGE: Or the fact that it may actually have been required to pay \$32 million. It is a huge trust exercise on your part. You just take it at face value. That is what happens, is it not?

The Hon. DANIEL MOOKHEY: You accept the declaration.

The Hon. NATALIE WARD: Can we have one question at a time, and can the witness be allowed to answer?

Mr DAVID SHOEBRIDGE: You just take it at face value. It is a huge trust exercise. You accept what you are told.

Mr SMYTHE: Unless we have reason to believe otherwise.

Mr DAVID SHOEBRIDGE: And in the ordinary course of events you do not have any process for testing that?

Mr JOHNSTON: We do. We are provided with data from other agencies, including the tax office, to understand where we should, from a likelihood or a risk perspective, approach our compliance activity.

Mr DAVID SHOEBRIDGE: There was national focus on the Woolworths underpayments. You could not have missed it, but you cannot point to anything. You have not spoken to a single worker to test Woolworths'—you have not issued a section 72 notice? Nothing?

Mr JOHNSTON: I have not. With all due respect, Mr Shoebridge, I disagree. We continue to work on this matter, and we do it in the way that we are empowered to undertake it. Speaking to an individual worker is not a typical way for Revenue NSW, or any revenue organisation I would suspect across the country, to investigate underpayment of payroll tax.

The Hon. DANIEL MOOKHEY: Chief Commissioner, can I take you to the next case study, which will probably be the last case study I take you to, despite the volume of documents I produced. Can you turn to document C1? I will give you time to find it. It is a bit further down the pile.

Mr JOHNSTON: Is it towards the bottom?

The Hon. DANIEL MOOKHEY: No, it is the third one. It is to do with Domino's.

Mr DAVID SHOEBRIDGE: In the top right-hand corner.

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Got it?

Mr JOHNSTON: We are there.

The Hon. DANIEL MOOKHEY: Do you see this is another media report in relation to the Domino's Pizza case study?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Are you aware of longstanding issues about wage underpayment and wage theft in the Domino's franchise network?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Are you in a position to explain what Revenue NSW's strategy has been to investigate this for the purposes of payroll tax collection?

Mr JOHNSTON: The specifics of it I would again have to take on notice.

The Hon. DANIEL MOOKHEY: Can I now ask you to go forward to document C4, which is I think about approximately 50 pages after that one? Have you got that?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: This is an audit report into two entities. You can see at the top it says Domino's Pizza Enterprises Ltd and Hot Cell Pty Ltd and the Preston Holdings Family Trust. Do you see that?

Mr JOHNSTON: Yes.

Mr SMYTHE: Yes.

The Hon. DANIEL MOOKHEY: If you go to the next table it says that the date of the field audit is 13 March 2019. Do you see that?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: That is when this audit was undertaken. Is that a fair interpretation of the document?

Mr JOHNSTON: Yes, that is what it says.

The Hon. DANIEL MOOKHEY: You can see that down below it states:

REASON FOR INVESTIGATION

Project: *Industry*

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: It states: "This project selects customers based primarily on their specific industry classification." Do you see that?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Below, it states:

Sub-Project: *Undetermined Risk*

What does that actually mean, by the way?

Mr SMYTHE: The way that we conduct payroll tax audits or compliance activity takes into account a number of factors. We become aware of particular issues because of data matching; we become aware of particular issues through media reports. But we also undertake activity on the basis of different industry classifications, particularly where we may have reason to suspect that payroll records are maybe not quite as good as they could be or where there is a higher risk than the general run-of-the-mill business.

The Hon. DANIEL MOOKHEY: We can infer that they were selected for this audit because they classified them as higher risk. Is that a fair summary?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: Okay, great. Can you just turn to the next page? At the top it states:

Nature of business

The client Domino's Pizza Enterprises Ltd ... is a worldwide well-known pizza restaurant—
which is publicly listed, and—

They are the master franchisor of Domino's Pizza stores in Australia.

Do you see that?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: This is the Domino's headquarters, do we agree—or the master franchisor, to be fair?

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: You can see just down the page it states:

Client Notes on MARS during the last 4 years

The only relevant note for the previous audit was dated on 28/9/2005 ...

Can we infer that between 2005 and 2019 there was not a specific audit undertaken into Domino's—that this was the first audit in 14 years that was undertaken into Domino's?

Mr JOHNSTON: That is the inference from that note I would—

The Hon. DANIEL MOOKHEY: You might want to check.

Mr JOHNSTON: I will check.

The Hon. DANIEL MOOKHEY: Please. But it is not unreasonable for us to infer that?

Mr JOHNSTON: No.

The Hon. DANIEL MOOKHEY: You can see just down below it states:

SCOPE OF INVESTIGATION

2015, 2016, 2017 & 2018

They were the four payroll tax years that we were looking into in this audit, correct?

Mr JOHNSTON: Correct.

The Hon. DANIEL MOOKHEY: Can you just turn now to page 6 of 19 or 1445, if you do not mind? Do you see that?

Mr SMYTHE: Yes.

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: It says "Wages" and this is the first sentence, which is what I find most startling:

There was no error found in relation to the wages declaration in this case.

How is it possible given everything we know about Domino's that you audited them and you found nothing in relation to their wage declaration? How is that possible?

Mr SMYTHE: Mr Mookhey, this comes back again, I think, to the same issue that we have been discussing previously. What we look at when we are undertaking this activity is whether or not the wages that have been declared to us through the monthly returns match up with the amounts that have been identified under the Payroll Tax Act as payments that should be attracting tax. What it does not do is consider individual award arrangements or anything similar to determine whether or not particular workers are being paid at the correct rate. That is something beyond—

The Hon. ADAM SEARLE: Sorry, just a few moments ago you said that you levied payroll tax on wages paid or payable.

Mr SMYTHE: Yes.

The Hon. ADAM SEARLE: Presumably the payable component refers to that which is legally required to be paid?

Mr SMYTHE: Yes. There is a number—

The Hon. ADAM SEARLE: Sorry, I have not finished yet.

Mr SMYTHE: Sorry, Mr Searle.

The Hon. ADAM SEARLE: This whole legislation that we are looking at—combating wage theft, as the Government has put it—the idea is that if you look properly at the payroll tax you will detect instances of wage theft and, therefore, you can correct wage theft. Given the examples that Mr Mookhey has taken you to of notorious examples of wage theft, presumably when alerted to this you would have gone straight in and found that they have not been paying the proper rates of payroll tax. If that is not the case then either there is something wrong with your investigative methods or this legislation, as well meaning as it is, simply will do nothing to combat wage theft. That is the conclusion we should draw, is it not? If the declarations are correct and you are not looking at what is required to be paid, how do we square the circle here?

Mr JOHNSTON: Mr Smythe might want to build on my comment. I think it is very difficult to respond to a line in these reports when we provided 10,000 pages of documents. Looking at them in their fullest context actually is impossible to do in this setting. What we do know is that we continue to pursue this and work with other jurisdictions so we have compliance and harmony across the country, which is a complicated piece. As Mr Smythe correctly identified, through the process that our auditors in their functional issue is to identify whether these businesses have provided the correct information—this document says yes. But this wage theft bill gives us a whole range of actions that can provide better support. One is that we can provide information to Fair Work, which we are not currently able to, which is a step forward. I think the deterrence and the visibility and publicity of this is also a really valuable step forward that will take advantages, and it gives me in my role as Chief Commissioner further capacity and capability to explore areas beyond five years as well, which gives us the ability to—

The Hon. DANIEL MOOKHEY: Which, Chief Commissioner, we will get to. This case study is important for that point, which I want to ask you a couple of questions about as well, but just to complete on this: If you go down the page, apart from the fact that somehow Revenue NSW found that their wage declaration had no error, if you go down it says Domino's Pizza Enterprises—the master franchisor—ends up with a \$40,000 refund because they were de-grouped because of a grouping error—which is fair. Again, if a grouping error was made they are entitled to that money. But do you not see how that can appear seemingly absurd that Revenue NSW has managed to pick up a grouping error but missed the big wage issue and, as a result, they got a refund instead of, effectively, a proper audit? Is that unfair?

Mr JOHNSTON: I think what is unfair, Mr Mookhey, is the suggestion that we have missed something. We continue to work on this.

The Hon. DANIEL MOOKHEY: Okay. But then let us go back to that issue. You say you continue to work on this and you made the point about what this bill does, which is to relax the five-year statute—

Mr JOHNSTON: Yes.

The Hon. DANIEL MOOKHEY: These issues in Domino's surfaced back in 2016 but this audit was not commenced until 2019. It is a three-year gap when this was a notorious issue. Why did it take that three years before Revenue NSW acted? To be fair, Chief Commissioner, I know you were not there; maybe Commissioner Smythe might be able to assist us there, or you might need to take it on notice. You are telling us that basically the media is helpful to alert you to where to direct your resources, but this is an example where this was prominent—it could not be more prominent—and it took three years for an audit to commence.

Mr JOHNSTON: I will take it on notice to give some further instruction on what actions we took over that time. It is very difficult to talk back to 2016 and to make judgements around how we performed about that point and how we are doing that now. But—

The Hon. DANIEL MOOKHEY: I appreciate that, Chief Commissioner, except for the fact that this bill proposes to remove the statute of limitations because it has said that it is needed. But for that bill to be effective it requires a regulator that would use it. What I am trying to understand is what are the procedures that will be going alongside the bill. If it takes three years for Revenue NSW to act in response to a notorious case—

Mr DAVID SHOEBRIDGE: To start acting.

The Hon. DANIEL MOOKHEY: —to start acting in response to a notorious case, how can we have confidence that you will act on the less notorious cases that do not occupy *Four Corners* and do not arrive in *The Sydney Morning Herald*?

Mr JOHNSTON: It is a key responsibility of us to ensure that if this amendment goes through we embody the actions that will deliver on its intent. I can only give the commitment to doing that.

The Hon. DANIEL MOOKHEY: I appreciate that, Chief Commissioner, but just on the Domino's issue—that was the master franchisor. That was the person at the top of the chain. At that time in 2016 and 2017—at least in 2016 and 2017—there are 222 Domino's stores in New South Wales that are held through multiple franchise arrangements. You will have to take my word for that but trust me I checked. We have checked the records in terms of what was produced. Only four of those stores were audited by Revenue NSW. When so much of the wage underpayment took place at the franchisee level, below the master franchisor, only four of the 222 in the Domino's network were ever audited by Revenue NSW. Why were only four out of the 222 undertaken?

Mr JOHNSTON: I would have to take it on notice for a full answer but I would assume that some of this was related to those that were above the payroll tax threshold.

The Hon. DANIEL MOOKHEY: To be fair that was the argument made by the franchisors but the irony of course is that, in the four that you did do, there were issues to do with whether or not those businesses were grouping stores adequately and whether or not there was a practice of them de-grouping their businesses to avoid the threshold when they should have been grouped. In fact, the irony of course is that the four audits you did do picked this up. It did pick up the fact that these stores, as is a common strategy in a franchise network, were de-grouping businesses and constructing corporate groups to avoid the threshold, hence the need for a Revenue NSW investigation in order to make sure that that was correct. Because in truth it seems like they were manipulating their corporate arrangements to avoid payroll tax. But we would not know because only four of them were not done and we are now passed the statute of limitations on all of this. That is the issue we have here. Effectively a lot of these people have gotten away with it because Revenue NSW did not act. I would like you to respond if that is possible.

Mr JOHNSTON: It is difficult to talk to actions before I was part of this organisation but we cannot audit every—and this will not be taken as a point about us being light on certain organisations. We cannot audit every business. We continually work to improve our methods of identifying where there are issues so that we can do it in as effective and efficient a manner as possible. Why didn't we go further with Domino's—I am not sure. I do not know. We collect a significant additional revenue for New South Wales through our compliance activity which should not be understated and our focus is on ensuring correct payroll tax is paid. I think we have good success at that, particularly for the great staff that do an incredible job in doing this very complex piece of work. We are pursuing it in every way that we have capability and capacity to do.

The Hon. DANIEL MOOKHEY: Chief Commissioner, rest assured. I think the return on investment on Revenue NSW's compliance activities is good. I actually think therefore you should have more resources and more powers to do this. As a result I will hold you to account as to what you have done. I want to complete with this. The balance of the documents shows 15 other case studies. I want to put to you and allow you to respond however you see fit to the ones that I say you have not done any investigations into or there is no evidence that you have. There is no evidence in the documents that have been produced that you ever audited Qantas, despite Qantas admitting to underpayment of \$7 million; Sunglasses Hut, despite them admitting to underpayments of \$2.3 million; Super Retail Group, despite them admitting to underpayments of \$61 million; the Commonwealth Bank, despite them admitting to underpayments of \$53 million; the Rockpool Dining Group, given that they have admitted to \$10 million of underpayments; Caltex, at least worth \$5.7 million of underpayment, but to be fair you did audit nine of their franchises; and Subway. I put it to you that you have not audited them at all as a result of the wage theft issues. If I am wrong, either now or notice, tell me.

Mr JOHNSTON: I will have to take it on notice. I think an extra point that is worthy of mentioning is that we have come through the past year with a pandemic where we considered our compliance activity and took a slight step back. We continued with auditing where appropriate but also we were mindful there was an opportunity for some things—not necessarily these cases; I am not talking about wage theft—to pause. I think that was appropriate.

The Hon. DANIEL MOOKHEY: I am not disagreeing with that but equally the statute of limitations on all this is hitting. That is the issue. I understand that you have to apply a risk-based approach. This is clearly risk. It is in headlights. It is in the national spotlight. But as a result it seems like these people are going to get away with it because of the statute of limitations, which incidentally is an argument for the bill.

The Hon. ADAM SEARLE: Just on that, during your audits if you are not having reference to award obligations, how do you define "payable"—wages that are payable as opposed to having been paid? I do not understand that part of your evidence.

Mr SMYTHE: When we look at payable we look at where there is a present and existing obligation to hand over money.

The Hon. ADAM SEARLE: Like an award.

Mr SMYTHE: That is one way of looking at it. I am not saying that amounts of money are not payable under an award or anything like that, Mr Searle. The point I am trying to make on this is when we are looking at it almost from an accounting perspective—an actual movement of funds perspective—the funds have either been paid or they have agreed to be paid but the funds have not actually flowed.

Mr DAVID SHOEBRIDGE: I am looking at the Act you are obliged to actually administer. Do you accept you have to administer in accordance with law? That is the starting point—you actually have to administer the Act?

Mr JOHNSTON: Yes, Mr Shoebridge. We accept that.

Mr DAVID SHOEBRIDGE: I do not see any reference to the kind of test you are putting, Mr Smythe. I am reading section 13 of the Payroll Tax Act and in the definition of wages it says "an amount paid or payable". It does not have all that other verbiage you were putting on it, Mr Smythe. It is paid or payable. The question is do you ever actually look at what was payable?

Mr SMYTHE: Yes.

The Hon. ADAM SEARLE: Including the industrial obligations.

Mr DAVID SHOEBRIDGE: They are payable.

Mr SMYTHE: I am a tax lawyer. In the functions that I undertake for the chief commissioner in assisting and administering the Act, I do that to the best of my ability. I am not saying that amounts payable under contracts of employment or awards or anything else are or are not payable. What I am saying is that, when we do the audit activity that we need to do, we go through the records that are provided to us and we have a look at what amounts have been paid, how they are categorised or classified, whether or not they are paid to employees, whether or not they paid under relevant contracts to certain contractors, and whether or not particular businesses or entities that are actually paying the funds should be grouped together and not obtain multiple non-payment thresholds. That is what we do.

The Hon. ADAM SEARLE: Mr Smythe, just on that—if you are not looking at award obligations or the amounts payable under the employees' contracts of employment, then arguably you are not even doing your existing compliance function properly. But secondly, assuming that you are approaching in the way you have outlined it, whether under the existing law or this legislation that is before the Parliament, it will literally do nothing to combat wage theft because, based on the case studies that Mr Mookhey has taken you to, you have got flagrant examples of wage theft followed by apparently no additional payroll tax being paid by these entities even though, as night follows day, it is logical that they have not been paying the right amount of payroll tax based on what they should have paid their workers.

The Hon. NATALIE WARD: Chair, is it possible to have a question, and from one person at a time please?

The Hon. ADAM SEARLE: That was my question. I asked the question.

The CHAIR: I think that was a question. So let us hear the answer.

The Hon. ADAM SEARLE: The legislation before the Parliament is not going to be effective at combating wage theft given the evidence you have just outlined about how you conduct your compliance activities. That is the case, isn't it?

The Hon. NATALIE WARD: Point of order: These witnesses are being asked about what their role is. Their role is not a policy role in relation to the bill or its effectiveness. Their role is to talk about the current administrative work that they do in carrying out their jobs. They have given a submission about what they can and cannot do and what they are entitled and empowered to do under the legislation. I am not sure it is a fair question.

The Hon. ADAM SEARLE: To the point of order: It is entirely fair because my questions go to the basis of the bill and this is the agency that is the architect of the legislation. The bill has in the title "combating wage theft" so I am looking at how effective that objective is based on the way these witnesses have outlined the way they conduct their work.

The Hon. NATALIE WARD: And a number of times they have given answers to the same questions from various—

The CHAIR: I am going to rule on this.

The Hon. NATALIE WARD: If I could just finish my sentence please, I would be appreciative.

The CHAIR: No, because I am happy to rule on this. We are not going to debate it. We are chewing up time.

The Hon. NATALIE WARD: I am trying to just finish my sentence and you do let other members finish theirs. I would be appreciative if you would extend the same courtesy to me please. I do not believe that these witnesses are trying to evade the question. They have answered it a number of times. I think it would be more useful for the Committee to hear about what they can do. I do not think that there is a fair answer to this that they can possibly give.

The CHAIR: The question is in order so the witnesses are entitled to answer the question as they see fit.

Mr JOHNSTON: Mr Searle, I think it is a matter of opinion whether we would be effective in doing this. I would say that the enhanced positioning that this bill places us to let us to go further back in time about sharing information and having some more discretion about how and where we investigate will be quite powerful. What Revenue NSW as an operational arm of the New South Wales Government has to do is work out how we make this live and work. I can only speak of the commitment to doing that well because it is not in place that we have that. As we stand today our function is not a review of awards; we are not an industrial agency, we are a revenue collection agency. That is probably as far as I could comment on that.

The Hon. NATALIE WARD: Chair—

The CHAIR: Mr Shoebridge has sought the call and then we will go to—

The Hon. NATALIE WARD: I just note that we have been going for almost 45 minutes almost and we have had no time so I would appreciate some time.

The CHAIR: There is not allocated timing. Mr Shoebridge has the call and then we will go to Ms Ward.

The Hon. TAYLOR MARTIN: Hang on—

The Hon. NATALIE WARD: No—

The CHAIR: I am doing it in the order—

The Hon. TAYLOR MARTIN: To be fair, we had this discussion in our deliberative this morning and we all agreed in good faith—

The CHAIR: Everyone will be given the chance—

The Hon. NATALIE WARD: Can we finish before you talk over us, please?

The CHAIR: No, because there is very limited time, as we are pointing out.

The Hon. BEN FRANKLIN: But it has been 45 minutes, Madame Chair. This is not an unreasonable request.

The CHAIR: All I am doing is trying to work in order of people who seek the call. Mr Shoebridge has sought the call—

The Hon. NATALIE WARD: Mr Shoebridge has asked questions and the Opposition—

The CHAIR: —and I have just said that Ms Ward will be next.

The Hon. NATALIE WARD: —have taken 45 minutes of time. We would appreciate some opportunity, Chair, otherwise we will ask to go into committee because we agreed in good faith that we would have a free-flowing discussion. I have some questions I would like to pose and I see—

The CHAIR: And you will be able to ask them.

The Hon. NATALIE WARD: —that time is running out. I have politely sat back and waited to seek the call. You again declined to give the Government the call—

The CHAIR: That is not what has happened and now you are wasting your own time because Mr Shoebridge asked first. I have said already and I will say now for the fourth time, you will have the call next and that is where we will go—so that everybody is well aware that that is the order of things. Any other member who wishes to seek the call is welcome to do so. Mr Shoebridge will proceed.

Mr DAVID SHOEBRIDGE: The Government, in its support for the bill, has repeatedly referenced second reading speeches and briefings that have been provided that the context of this is that the underpayment of employee wages has become a significant concern. Do you accept that that is the context in which this bill has been presented?

Mr JOHNSTON: Yes, I agree.

Mr DAVID SHOEBRIDGE: And you have a statutory remit to get payroll tax paid upon wages that are payable. Do you accept that?

Mr JOHNSTON: Yes.

Mr DAVID SHOEBRIDGE: Just to be clear, there was a suggestion that we are asking questions because we do not think you are trying to assist or we do not think you are trying to be frank. That is not my position at all. I think you are trying to be frank and tell us what you do—

The Hon. NATALIE WARD: That was not what I asserted at all.

Mr DAVID SHOEBRIDGE: Just to be very clear, I think you are trying to be frank and tell us what goes on.

The Hon. NATALIE WARD: I agree. That is not what I asserted. That is misconstruing what I said.

Mr DAVID SHOEBRIDGE: But you never really test about what is or is not payable by looking at what the employees should be paid. I accept, Mr Smythe, that you come at it from a tax lawyer's point, but it seems to me that there is a big chunk missing. Would you agree with that? There is a big chunk missing within your organisation to work out what was or was not payable. Even if you are limited to circumstances where very real concerns have been raised, you do not have those skills inside the office to work out what was in fact payable, do you?

Mr JOHNSTON: Mr Shoebridge, I would consider the effectiveness of our compliance team on generating additional revenue would suggest that we do have the skills to do that work.

Mr DAVID SHOEBRIDGE: Who in your team—and I do not mean by name but by position—has the skills to work out what was actually payable in terms of, say, the wage books of Woolworths? Do you have a team who can look at the wage books and say, "Well, actually, you are \$300 million short. This was the amount that was payable"? Who has those skills?

Mr SMYTHE: Are you referring to an analysis of the workers and whether or not they are being paid under the correct award?

Mr DAVID SHOEBRIDGE: An analysis of whether or not the wages payable, which is what they are obliged to pay stamp duty on under the legislation, were what was disclosed. That would, I imagine, require working out what was payable and some knowledge about what the award entitlements were. You do not have those skills in-house, do you?

Mr SMYTHE: We do not have anyone who can analyse awards. I am not aware of anyone with the skill set to analyse awards.

Mr DAVID SHOEBRIDGE: So that whole part of the Payroll Tax Act is not being enforced at the moment. There is nobody enforcing tax on what is payable.

Mr JOHNSTON: We have a very large team that is enforcing tax that is payable. You are coming at it from a particular—these investigations are very complex.

Mr DAVID SHOEBRIDGE: But—

The Hon. NATALIE WARD: Let him finish.

Mr JOHNSTON: They are very complicated and you are talking about very operational perspectives about how do we arrive at a point where we are completing our audits. Do we look at individual awards in every line of every worker's responsibility? No, we do not. We have not framed our work like that. Whether we should is a point of debate. But we work through—in past years, excluding last year—several thousand of these each year, which generates a lot of additional revenue. I think you are talking about what skills we have to approach it in that way, which is a reasonable question, which we are not tasked to do and we do not have that.

Mr DAVID SHOEBRIDGE: Well, I might just ask you, because we are running short on time—

The Hon. NATALIE WARD: Chair, I would like to ask some questions.

Mr DAVID SHOEBRIDGE: Could you can take that on notice—

The Hon. NATALIE WARD: Can I ask that this is the last question?

The CHAIR: Can you stop interrupting please, Ms Ward? Mr Shoebridge has the call and then we will go to you.

Mr DAVID SHOEBRIDGE: I am trying to get it done. I will try to get these questions taken on notice.

The Hon. NATALIE WARD: Chair—

The CHAIR: He has just said that he is wrapping up.

The Hon. NATALIE WARD: Point of order: I am not interrupting, I am seeking the call.

The CHAIR: You have sought it and I have already said that you will be next. I would like to let Mr Shoebridge finish.

The Hon. NATALIE WARD: Alright.

Mr DAVID SHOEBRIDGE: Because we are short on time, I will ask you to take them on notice. Could you provide on notice what, if any, skills or positions there are in place to determine what wages were payable? I am particularly looking at what is payable under awards or other employee entitlements.

Mr JOHNSTON: Sure.

Mr DAVID SHOEBRIDGE: And, secondly, what, if any, arrangements you have to drag that information—say, from the Fair Work Ombudsman or some Federal regulators—so as you have that information to hand or if there is an alternate method. If so, how that works in practice and if you have used it.

Mr JOHNSTON: Yes, we can take that on notice.

The CHAIR: Ms Ward.

The Hon. NATALIE WARD: Thank you, Chair. In the 30 seconds I have left to ask you some questions and seek your answers, thank you for your assistance to the Committee today. My colleague will have some questions, too, I am sure, so we will share the minimal time we have been allowed.

The Hon. DANIEL MOOKHEY: If you would like more time we will happily extend.

The CHAIR: Yes, we can keep going.

The Hon. NATALIE WARD: I would appreciate the opportunity to just ask my questions uninterrupted, thank you kindly.

The Hon. DANIEL MOOKHEY: We would all appreciate that.

Mr DAVID SHOEBRIDGE: We would all appreciate that.

The Hon. NATALIE WARD: Can you tell us about your industrial relations expertise? Do you have any? Do you have an industrial relations investigation department?

Mr JOHNSTON: No, we do not.

The Hon. NATALIE WARD: It is not your role, is it?

Mr JOHNSTON: No.

The Hon. NATALIE WARD: In fact, you cannot. There is nothing in the legislation that allows you to be an industrial relations regulator or mediator, is there?

Mr JOHNSTON: That is not our function to do that work as we are today, no.

The Hon. NATALIE WARD: What is your legislated role in investigating whether businesses are paying their workers the correct wages or undertaking enforcement action about correct wages? What is your role to ensure correct wages are paid? Do you have that in the legislation? Do you have a division that does wage investigation and mediation services?

Mr JOHNSTON: No.

The Hon. NATALIE WARD: What expertise do you have in detecting wage theft and mediating between parties on wage matters? Do you have a division that deals with detecting wage theft and mediating between parties on wage matters?

Mr JOHNSTON: No. Instances of this come through our work trying to identify the correct amount of payroll tax to be paid.

The Hon. NATALIE WARD: And that is exactly what this bill is trying to equip you to do—to use the lever that you do have, which is payroll tax, to assist in reporting and furthering information to assist in those investigations, is it not?

Mr JOHNSTON: That is what our work is.

The Hon. NATALIE WARD: The Federal bill fell over in the Senate. Do you think that might have been helpful in assisting to investigate and prosecute wage theft in Australia?

The Hon. DANIEL MOOKHEY: Is that a policy question?

The Hon. NATALIE WARD: From your perspective administering the Acts that you do.

Mr JOHNSTON: From our perspective this needs to work from a national setting. It is important to have some harmony around how that is treated. I think the bill is positioned in a way that complements the national view.

The Hon. NATALIE WARD: Can you tell us about what you do? Can you explain how Revenue NSW conducts audits in a targeted—my understanding is that you do but I am not a revenue NSW expert so tell me if I get it wrong. You do targeted, risk-based approached investigations. Can you talk to the Committee about those activities, particularly in relation to those that have the highest potential for non-compliance?

Mr SMYTHE: I will do my best to respond to that question. While it may seem simple, it is actually a very tough question.

The Hon. NATALIE WARD: I am sure it is, which is why I avoided tax law in my practice.

Mr SMYTHE: There are a number of factors that are taken into account. At any given time our compliance program may be focused on particular industries where we have noticed issues through our general compliance activity. We do, of course, take note of what is reported in the media. We also engage in an analysis at various times on compliance with a particular provision. Mr Mookhey earlier referred to the grouping provisions. That is a common area where people sometimes make mistakes. It is also for those who are less than forthright in their tax dealings to try to take advantage of the provisions in a way that will see them pay less tax than should otherwise be payable. In performing these functions, we engage with a number of stakeholders and information providers, including the ATO. We engage in analysing numerous sources of data, trying to match what we have been told with what external records are telling us. I might stop there because I could talk about this for quite a while.

The Hon. NATALIE WARD: I am sure you could go on. I would not want to be somnambulist about it. How will this bill help you to do what you want to do to enable Revenue to work more closely with the appropriate bodies to combat wage theft?

Mr SMYTHE: There are a number of initiatives that are contained in the bill. The first allows us to deal directly with Fair Work to provide information with them.

The Hon. NATALIE WARD: Which you cannot presently do and, but for this bill, you will not be able to do.

Mr SMYTHE: Correct. There are provisions in there which, upon being provided with guidelines, would allow us to publicise entities that have engaged in underpayment of wages to their workforce. The third major limb of the bill deals with increasing the penalty regime for offences. That is not limited to wage theft, but in wage theft there are a number of occurrences that could attract the operation of those increased penalties.

The Hon. NATALIE WARD: And indeed there is a new penalty, isn't there? There is a newfangled fun one about knowingly avoiding payroll tax.

Mr SMYTHE: Yes. Our tax evasion provision is probably the largest single new measure that is being introduced into the Taxation Administration Act. There is also a substantial increase in the penalty for knowingly providing misleading information to the chief commissioner.

The Hon. TAYLOR MARTIN: I have a few simple questions. My learned friend has covered most of the subject already.

The Hon. NATALIE WARD: Sorry.

The Hon. TAYLOR MARTIN: No, no. How many payroll tax investigations have Revenue NSW initiated in recent years?

Mr JOHNSTON: I can provide that, if you give me a moment.

The Hon. TAYLOR MARTIN: Yes.

Mr JOHNSTON: We significantly reduced last year due to COVID.

The Hon. NATALIE WARD: As did the businesses.

Mr JOHNSTON: The information that I have—in 2019-20 we pursued 4,215 payroll tax compliance investigations.

The Hon. TAYLOR MARTIN: Wow, okay.

Mr JOHNSTON: Seventy-nine per cent of these resulted in additional revenue, totalling \$168.9 million.

The Hon. TAYLOR MARTIN: Wow!

Mr JOHNSTON: In the current financial year as at the end of February, we identified \$143 million in additional revenue from 1,386 investigations.

The Hon. TAYLOR MARTIN: Unreal. Do you have any figures in front of you for previous financial years?

Mr JOHNSTON: I do not have those to hand, but I can—

The Hon. TAYLOR MARTIN: Okay, not a problem. That is a pretty good indication.

The Hon. NATALIE WARD: Generally it was a lower year, is that right?

Mr JOHNSTON: We have increased our efforts in the second half of the financial year, so we are on track to do quite well again, on par, but probably less investigations due to the nature of the year that we have had.

The Hon. TAYLOR MARTIN: Well done.

Mr JOHNSTON: And some industries are being cautious about how we engage with them during difficult times for their businesses.

The Hon. NATALIE WARD: But you are not sitting back doing nothing in this time. It is not that you have no levers and you are not able to do anything. You are conducting investigations in line with your obligations and your remit, are you not?

Mr JOHNSTON: We do. That is correct, yes.

The Hon. NATALIE WARD: It is not like any business gets a phone call and says, "Yay, it is Revenue NSW on the phone," and it is some lovely engagement they have and they think that is terrific. You have a job to do.

Mr JOHNSTON: We do our very best to give them the best experience they can with us, but obviously it is a difficult and complex one that we have to undertake.

The Hon. NATALIE WARD: That you diligently carry out on behalf of the people of New South Wales. Thank you.

Mr JOHNSTON: Yes.

Mr DAVID SHOEBRIDGE: I think it is important that we read onto the record that on 18 March a motion to reinsert the wage theft provisions from the Federal industrial relations bill that have been removed by the Coalition was blocked by a vote of 35 to 33 by the Coalition and Pauline Hanson's One Nation party. It was blocked by the Coalition.

The Hon. TAYLOR MARTIN: Is that a question or are you just—

Mr DAVID SHOEBRIDGE: Just to correct the record.

The Hon. NATALIE WARD: Chair, can we more usefully use the time that we have? I have a further question.

The Hon. DANIEL MOOKHEY: I actually have a question.

The Hon. ADAM SEARLE: I have three questions. Can I put them on notice?

The CHAIR: Yes.

The Hon. NATALIE WARD: We have talked about how it will help but one aspect we have not talked about are these potential ministerial guidelines around the legislation. Can you talk us through the purpose of ministerial guidelines under the legislation?

The Hon. DANIEL MOOKHEY: Can I add onto that, because it is a good question? Can we also set them out regulation versus legislation, because I was going to ask the same thing?

The Hon. NATALIE WARD: You can answer however you would like and if we want to take it on notice, we will.

Mr SMYTHE: The use of ministerial guidelines, particularly in taxation laws, are quite helpful in trying to provide some parameters but in a flexible manner that allow us to set out rules that are easily understood and well publicised on particular matters. The guidelines in this instance are dealing with, for want of a better term, the name-and-shame provisions. As everyone knows, I think, it has not been a longstanding element of the British common-law system as adopted here for public shaming to form part of an enforcement regime. That seems to have changed over the last 50 or 60 years.

We believe it does, in fact, carry quite a number of benefits in making sure that people, especially in the cases of businesses that are interacting with the public—many people like to understand whether or not the businesses they are engaging with are, in fact, upstanding corporate citizens. So the idea that particular businesses may be shorting their workers or otherwise engaging in activities that are not palatable to the general public is something that people would like to understand. However, we are quite cognisant of the power of the heavy arm of a regulatory authority such as Revenue NSW. It is only appropriate that there are strict guidelines about how we publicise people's activities, or corporation activities, in public. That is the aim of the guidelines.

The Hon. NATALIE WARD: To try to get that balance right between deterrence and naming and shaming in a situation that may not be helpful?

Mr SMYTHE: Correct.

The Hon. NATALIE WARD: No-one wants to cover up bad guys, but we certainly want to get the balance right. It is not the old days of putting people in the middle of the town square and flogging them, is it?

Mr SMYTHE: No.

Mr JOHNSTON: No, it is not.

The CHAIR: Thank you very much for your attendance and participation today. The Committee has resolved that there is a 48-hour period for answers to be given to questions on notice. The secretariat will be in touch with details about all the questions that were taken on notice and how to respond to those.

(The witnesses withdrew.)

The Committee adjourned at 12:00.