



Australian Salaried Medical Officers' Federation

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## ASMOF submission to Inquiry on Unlawful underpayment of employees' remuneration

The Australian Salaried Medical Officers' Federation (ASMOF) is the Doctors' Union, representing over 12,000 medical practitioners including Staff Specialists, Clinical Academics, Career Medical Officers as well as doctors in training (interns, residents and registrars) who are employed in health services across Australia.

ASMOF would like to draw the Committee's attention to our experiences with members, which is that underpayment of doctors' wages in public health services is alarmingly commonplace throughout Australia. ASMOF is concerned that doctors in training across Australia are particularly vulnerable to underpayments.

Underpayments of public sector employees are typically not given equal attention in the media and public discourse surrounding wage theft as compared large corporate cases, however ASMOF believe they are also worthy of the Committee's consideration.

These underpayments take on many forms, including but not limited to:

- Underpayment of contract hours
- Non payment or underpayment of unrostered overtime
- Underpayment of Superannuation
- Inappropriate deduction of meal breaks
- Incorrect industrial classification
- Underpayment or inappropriate payment of call backs and remote recall claims
- Incorrect payment of leave and other entitlements including Allocated Days Off, Study Leave Annual Leave, On Call Allowance, Travel Allowance and others.

The potential scope of underpayments to doctors working in public health services across Australia is difficult to quantify but almost certainly huge.

One recent example was reported on 26 February 2020 by *Workplace Express*. In this case 10 intensive care specialist doctors are suing Victorian public health service Austin Health for more than \$3 million in alleged underpayments. These doctors have been employed on a part-time basis but were not paid the appropriate hourly rate for fractional appointments.<sup>i</sup>

ASMOF NSW regularly conducts pay audits on behalf of trainee members working for NSW Health and finds errors in almost every audit. In 207 individual pay audits conducted on behalf of doctors in training since 2016, just over \$1m has been recovered from NSW Health. Furthermore ASMOF NSW has investigated and exposed state wide errors relating to unpaid meal breaks and Leave Without Pay entries which have resulted in at least \$3-4m being returned to members across the state.

The AMA WA *Hospital Health Check Survey* findings from 2019 also point to a high prevalence of pay errors among doctors in training. Across the 7 hospitals measured, the top scoring hospital had 57% of members reporting that their payslip was correct, whilst at the lowest scoring hospital, just 26% of members reported that their payslips were correct.<sup>ii</sup>

It is not within the scope of ASMOF to audit the pay of all our members, nor should this responsibility fall onto Unions. Many of these pay errors reflect a lack of knowledge and training on doctor's pay and entitlements from staff undertaking payroll duties, a lack of monitoring and quality control within public health departments, and software system failures.

Underpayments can also point to increasing cost pressures and embedded cultures of overwork which have become standard practice in public hospitals. This is reflected in the widespread practice of doctors in training working unpaid overtime.

Concerns around wage theft in the public sector, and the particular risks for doctors with regards to unpaid overtime, have been raised in previous investigations into wage theft. In 2018 the McKell Institute attempted to quantify the impact of wage theft to Queensland's economy and noted:

'Whilst it is commonly assumed that wage theft is in the domain of unscrupulous and unethical employers in the private sector, it also occurs in the public sector.<sup>iii</sup> In fact, in some sectors such as health, wage theft is rampant. A survey of 465 junior doctors across Queensland last year found that 50 per cent had been pressured not to claim overtime and 40 per cent feared it would impact their employment if they did.<sup>iv</sup> Of those that did claim overtime to which they were entitled, only 30 per cent were actually paid. Not only does this indicate that no sector is immune, but that no employee is immune, even with 5-10 years tertiary education, Queensland doctors are not being paid their full entitlements with many too scared to demand them.'<sup>v</sup>

The latest evidence shows that unpaid overtime continues to be a significant and ongoing issue for doctors in training across Australia. The recently released results of the Medical Training Survey, undertaken by 9,378 doctors across Australia, has revealed that 27% of those doctors *never* get paid for their unrostered overtime, while a further 26% only *sometimes* get paid. These results are particularly concerning in both WA and Victoria, where over a 1/3 of DiTs (38% & 37% respectively) *never* get paid for working unrostered overtime.

These results are confirmed by *Hospital Health Check* conducted across Australia, which monitor local workplace conditions, as well as ASMOF's own findings.

ASMOF NSW *Member Engagement Survey* found that ¾ of trainee members had worked unpaid overtime. The 2019 QLD Resident *Hospital Health Check* found that almost a quarter of respondents had been advised not to claim and overtime payment, and 27% believed doing so would lead to a negative assessment.<sup>vi</sup> The South Australian Salaried Medical Officers Association (SASMOA) have also found that doctors in training are asked to deliberately under report unrostered overtime. The 2018 *Healthy Working Lives Survey* asked SA doctors in training why they were not paid for their unrostered overtime and the answers were varied. Half of respondents identified workplace culture as an issue, 30% believed it would be detrimental to their future career and 20% has been told not to claim the overtime by administration.<sup>vii</sup>

The precarious position of many doctors in training is evidently making them more vulnerable to underpayments. Trainees are unlikely to protest about these underpayments due to their employment on fixed term contracts and a fiercely competitive environment in which trainee positions are highly sought after. In some departments there may be a culture of fear and intimidation, for example when undercovering an underpayment in NSW one ASMOF member was explicitly told 'if you push this further and you want a career in surgery- you won't get it'.

The high prevalence of unpaid overtime is not just concerning from a financial perspective, it also represents a significant health and safety risk, and underpayments can continue to mask unsafe work hours. In August last year concerns about being overworked and underpaid led AMA Vic to pursue legal action in the Fair Work Commission on behalf of doctors in training at Sunshine Hospital who have been working over 60 hours per week.<sup>viii</sup> Broader class actions are also being considering in some jurisdictions to recuperate the wages lost by doctors in training working in our public sector, and promote a safer work culture.

It is the responsibility of state and territory governments to ensure that doctors are paid correctly for the hours they have worked, but it appears that many are failing in this fundamental task and are not adhering to Industrial agreements.

Whilst the general discussion of wage theft revolves around private businesses, governments should be mindful that significant underpayments are currently occurring to their own employees and this must change. Increasing cost pressures on our public hospitals will only worsen this already dangerous situation if left unchecked.

ASMOF recommend that the Federal Government formally work in partnership with state and territory governments to monitor and address public sector wage theft, and lead by example in fair wage practices.

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<sup>i</sup> Workplace Express (2019) 'Specialists make \$3 million claim'  
[https://www.workplaceexpress.com.au/nl06\\_news\\_selected.php?act=2&stream=7&selkey=58645&hlc=2&hlw](https://www.workplaceexpress.com.au/nl06_news_selected.php?act=2&stream=7&selkey=58645&hlc=2&hlw)

<sup>ii</sup> <https://www.amawa.com.au/wp-content/uploads/2019/05/HHC-Report-Card-2019.pdf>

<sup>iii</sup> The Services Union, Submissions to the Parliamentary Inquiry into Wage Theft 2018,  
[https://www.parliament.qld.gov.au/documents/committees/EESBC/2018/Wagetheft/submissions/04\\_6.pdf](https://www.parliament.qld.gov.au/documents/committees/EESBC/2018/Wagetheft/submissions/04_6.pdf)

<sup>iv</sup> Australian Medical Association Queensland Resident Health and Hospital Check 2017  
<https://ama.com.au/sites/default/files/Resident%20Hospital%20Health%20Check%202017.pdf>

<sup>v</sup> Cavanough E. & Rajadurai E. (2018) *The Impact of Wage Theft on Queensland's Workers & Economy*, The McKell Institute, <https://mckellinstitute.org.au/app/uploads/McKell-QLD-Impact-of-Wage-theft-on-QLD-Workers-and-Economy-FINAL-.pdf>

<sup>vi</sup> AMA QLD (2019) *Resident Hospital Health Check*,  
[https://qld.ama.com.au/sites/default/files/QLD/PDFs/PDFlinks/AMAQ\\_Resident-Hospital-Health-Check\\_2019.pdf](https://qld.ama.com.au/sites/default/files/QLD/PDFs/PDFlinks/AMAQ_Resident-Hospital-Health-Check_2019.pdf)

<sup>vii</sup> SASMOA (2019) Inquiry into workplace fatigue and bullying in South Australian Hospitals and Health Services.

<sup>viii</sup> Cunnigham, M.(2019) <https://www.theage.com.au/national/victoria/overworked-underpaid-junior-doctors-at-sunshine-hospital-launch-legal-action-20190731-p52cgr.html>