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Wage theft criminalised in Queensland

Megan Kavanagh and Rebecca
Campbell

EMPLOYMENT AND SAFETY



In brief - wage theft is topical in the media this year and appears to be high on the Fair Work Ombudsman's target list

Large companies (such as Woolworths, Coles, and Target) and high profile businesses (including Melbourne restaurateurs) have joined the growing list of employers who have been caught in underpayment

scandals.

Victoria and the ACT already have wage theft legislation in place, and there is currently legislation before the Western Australian parliament to this effect.

On the 15 July 2020, the Queensland Labor Government followed suit and introduced legislation to criminalise wage theft. We discuss this proposed legislation and the effect on employers below.

Queensland Wage Theft Bill

Following an inquiry into wage theft in Queensland and recommendations from its final report, the Queensland Government has introduced the *Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 (Bill)* to combat wage theft.

The Bill seeks to amend the *Criminal Code Act 1899* and the *Industrial Relations Act 2016*.

Act to be amended	Proposed amendment	Maximum Penalty
Criminal Code	<p>Introduction of an offence of an employer stealing from their employee, by way of not paying proper entitlements/wages required by a relevant industrial agreement (Modern Award, etc).</p> <p>This offence captures a broad range of payments, including:</p> <ul style="list-style-type: none"> • unpaid hours or underpayment of hours; • unpaid penalty rates; • unreasonable deductions; • unpaid superannuation; • withholding entitlements; • underpayment through intentionally misclassifying a worker including wrong award, wrong classification or by 'sham contracting' and the misuse of Australian Business Numbers; and • authorised deductions that have not been applied as agreed. 	10 years imprisonment
Criminal Code	Amendment of the definition of fraud to include where the offender is the employer of a victim.	14 years imprisonment
Industrial Relations Act	<p>The amendments to the <i>Industrial Relations Act</i> will introduce a procedure for fair work claims and wage recover claims in the Industrial Magistrates Court. The proposed amendments include:</p> <ul style="list-style-type: none"> • The Industrial Magistrates Court to be able to perform functions as an eligible court under the <i>Fair Work Act (FW Act)</i>. These provisions will enable a worker to access the small claim procedure under the FW Act that simplifies the recovery process for workers. • Clarification that if a worker starts proceedings for a fair work claim or an IR Act unpaid amount claim in the Industrial Magistrates Court or the QIRC, the registrar may refer the parties to a conciliation before the Court hears the claim. • Industrial Commissioners will be the conciliators for the fair work claims and IR Act unpaid amount claims. • Conciliation process for wage recovery claims for state workers. 	N/A

We note that while this legislation has not yet passed parliament, we consider it is likely it will be passed. We will update you if and when it does.

State IR Minister Grace Grace said that the legislation is not intended to capture employers who act honestly, its purpose is to capture employers who intentionally fail to pay employees and demonstrate an intent to deprive staff.

What can employers do to prepare?

Due to the complexity of modern industrial obligations, it is perhaps not surprising that payroll errors are made. In our experience, most underpayments are a result of administrative error or a shortcoming in the payroll system, rather than any deliberate attempt to underpay employees.

If you are concerned that there might be errors in your payroll system, it is important to consider how you might

best prepare for an audit of your system. A well prepared audit provides employers with accurate information to establish the extent of any errors, and how to rectify them.

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