

Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020

Report No. 35, 56th Parliament
Education, Employment and
Small Business Committee
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Education, Employment and Small Business Committee

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Abbreviations

Ai Group	Australian Industry Group
AMIEU	Australasian Meat Industry Employees' Union
ASBFE	Australian Small Business and Family Enterprise Ombudsman
AWU	Australian Workers' Union
Bill	Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020
CCC	Crime and Corruption Commission
CC Act	<i>Crime and Corruption Act 2001</i>
CCIQ	Chamber of Commerce and Industry Queensland
committee	Education, Employment and Small Business Committee
Criminal Code	<i>Criminal Code Act 1899</i>
DPP	Director of Public Prosecutions
department/DoE	Department of Education
FW Act	<i>Fair Work Act 2009 (Cth)</i>
FWO	Fair Work Ombudsman
HIA	Housing Industry Australia
HRA	<i>Human Rights Act 2019</i>
IR Act	<i>Industrial Relations Act 2016</i>
LAQ	Legal Aid Queensland
LGAQ	Local Government Association of Queensland
LSA	<i>Legislative Standards Act 1992</i>
NRA	National Retail Association
OIR	Office of Industrial Relations
QCU	Queensland Council of Unions
QIRC	Queensland Industrial Relations Commission
QLS	Queensland Law Society

QPS	Queensland Police Service
UWU	United Workers Union
Wage Theft Inquiry	Education, Employment and Small Business Committee, Inquiry into wage theft in Queensland
Wage Theft Report	Education, Employment and Small Business Committee, Report No. 9, 56th Parliament - <i>A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland, 2018.</i>
YWH	Young Workers Hub

Chair's foreword

This report presents a summary of the Education, Employment and Small Business Committee's examination of the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020. The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Bill follows a comprehensive inquiry conducted by the committee in 2018 into the incidence, forms and impacts of wage theft in Queensland, and the effectiveness of the current regulatory framework at the state and federal level in dealing with wage theft.

The committee tabled its [*Report No. 9, 56th Parliament - A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*](#) (Wage Theft Report) on 16 November 2018. The 2018 Wage Theft Report outlined the significant body of research and evidence regarding the incidence of wage theft in Queensland and the impacts wage theft has on individuals and their families, businesses and the broader economy. The Wage Theft Report highlighted:

Conservative estimates suggest that over 437,000 Queensland workers are not receiving their full wages, and that a resulting five percent loss in income for these individuals would amount to an aggregate \$1.22 billion loss annually. In terms of superannuation, the annual loss associated with the underpayment or non-payment of superannuation has been estimated at \$1.12 billion.¹

The committee made 17 recommendations in the Wage Theft Report. Of the six relating to the Queensland Government, two recommendations (Recommendations 8 and 15) required legislative amendment and are the genesis of this bill.

The objectives of the Bill are to implement the underlying policy intent of Recommendation 8 (Simple, quick and low-cost wage recovery process for workers) and Recommendation 15 (Criminalisation of wage theft). The Bill seeks to provide Queensland workers who have fallen victim to wage theft and unpaid or underpayment of wages with a clear, quick and simplified way for them to recover their wages; and to deter employers from engaging in intentional and deliberate wage theft, particularly those who engage in it as a business model, through criminalisation.

The committee made two recommendations: that the Bill be passed; and that the conciliation process proposed by the Bill, be mandatory.

On behalf of the committee, I thank those individuals and organisations, who made written submissions on the Bill and appeared before the committee. Many have done so for both this Bill and the 2018 wage theft inquiry, and have been of significant assistance to the committee.

I also thank our Parliamentary Service staff, the Department of Education (in particular, the Office of Industrial Relations) and the Department of Justice and Attorney-General.

This Bill is for all Queensland workers who have fallen victim to wage theft and unpaid or underpayment of wages.

I commend this report to the House.



Leanne Linard MP

Chair

¹ Education, Employment and Small Business Committee, *Report No. 9, 56th Parliament - A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*, p ix.

Recommendations

Recommendation 1

2

The committee recommends the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 be passed.

Recommendation 2

25

The committee recommends the conciliation process for fair work claims commenced under the Industrial Magistrates Court, be mandatory, with employers and employees required to make 'reasonable attempts' at reaching agreement.

1 Introduction

1.1 Role of the committee

The Education, Employment and Small Business Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.²

The committee's primary areas of responsibility include:

- Education
- Industrial Relations
- Employment and Small Business
- Training and Skills Development.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLA)
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.³

1.2 Inquiry process

The Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly and referred to the committee on 15 July 2020. The committee was required to report to the Legislative Assembly on the Bill by 28 August 2020.

On 17 July 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Twenty-seven submissions were received (see Appendix A for a list of submitters).

The committee received a public briefing about the Bill from the Department of Education (department) on 27 July 2020 (see Appendix B for a list of the officials who appeared at the briefing).

The committee received written advice from the department in response to matters raised in submissions.

The committee held a public hearing on 10 August 2020 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.⁴

1.3 Policy objectives of the Bill

The objectives of the Bill are to implement the underlying policy intent of Recommendation 8 (Simple, quick and low-cost wage recovery process for workers) and Recommendation 15 (Criminalisation of wage theft) of the Education, Employment and Small Business Committee, Report No. 9, 56th Parliament - *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*, (the Wage Theft Report).

² *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

³ *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

⁴ Queensland Parliament, Education, Employment and Small Business Committee, www.parliament.qld.gov.au/work-of-committees/committees/EESBC.

According to the explanatory notes, the Bill will achieve its objectives by:

- (i) *enabling the prosecution of wage theft as stealing under the Criminal Code;*
- (ii) *increasing the maximum penalties in the Criminal Code for the offences of stealing and fraud relating to wage theft; and*
- (iii) *facilitating the Industrial Magistrates Court's jurisdiction for wage recovery matters, including the small claims wage recovery procedure for matters of not more than \$20,000 under section 548 of the Fair Work Act 2009 (Cth) (FW Act).⁵*

1.4 Government consultation on the Bill

The explanatory notes acknowledge the wide consultation conducted as part of the committee's inquiry into wage theft in Queensland (Wage Theft Inquiry) in 2018, which included unions, employer organisations and industry groups, law firms, community organisations and academics.⁶

Further targeted consultation was undertaken by the department with stakeholders including the Bar Association of Queensland, Legal Aid Queensland (LAQ) and the Queensland Law Society (QLS), during drafting of the Bill, with the department advising 'feedback received has been taken into account in finalising the Bill'.⁷

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 be passed.

⁵ Explanatory notes, p 2.

⁶ Explanatory notes, p 3.

⁷ Explanatory notes, p 3.

2 Background to the Bill

2.1 Wage Theft Inquiry

The Bill follows a comprehensive inquiry conducted by the committee in 2018.

On 17 May 2018, the Legislative Assembly referred an inquiry into the problem of wage theft in Queensland to the committee.

Under the terms of reference for the inquiry, the committee was required to consider:

- a) *the incidence of wage theft in Queensland, with reference also to evidence of wage theft from other parts of Australia;*
- b) *the impact of wage theft on workers, families, law-abiding businesses, the economy and community;*
- c) *the various forms that wage theft can take, including through unpaid super, the misuse of ABNs and sham contracting arrangements;*
- d) *the reasons why wage theft is occurring, including whether it has become part of the business model for some organisations;*
- e) *whether wage theft is more likely to occur in particular industries, occupations or parts of the state or among particular cohorts of workers;*
- f) *the effectiveness of the current regulatory framework at state and federal level in dealing with wage theft and supporting affected workers; and*
- g) *options for ensuring wage theft is eradicated, including consideration of regulatory and other measures either implemented or proposed in other jurisdictions interstate, nationally or internationally and the role of industrial organisations, including unions and employer registered bodies in addressing and preventing wage theft.*⁸

The committee was required to report to the Legislative Assembly by 16 November 2018.

As part of the Wage Theft Inquiry, the committee conducted consultation with stakeholders, including an online survey which received 360 responses, 24 hearings across Queensland, and received evidence from more than 100 witnesses.

The committee tabled its [*Report No. 9, 56th Parliament - A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*](#) on 16 November 2018.

The Wage Theft Report detailed the significant body of research and evidence regarding the incidence of wage theft in Queensland and the impacts wage theft has on individuals, businesses and the broader economy. The Wage Theft Report highlighted:

*Conservative estimates suggest that over 437,000 Queensland workers are not receiving their full wages, and that a resulting five percent loss in income for these individuals would amount to an aggregate \$1.22 billion loss annually. In terms of superannuation, the annual loss associated with the underpayment or non-payment of superannuation has been estimated at \$1.12 billion. Further, annual reductions in consumer spending in Queensland and in federal tax revenue have respectively been estimated at \$100 million and \$60 million. Taken together, these losses could amount to almost \$2.5 billion stripped from the Queensland economy every year.*⁹

⁸ Hon Anastacia Palaszczuk, Queensland Parliament, Record of Proceedings, 17 May 2018, 1364.

⁹ Page ix.

The committee made 17 recommendations, of which six related to the Queensland Government, and 11 to the federal government. Of the six relating to the Queensland Government, two recommendations (Recommendations 8 and 15) required legislative amendments:

Recommendation 8

The committee recommends the Queensland Government review and take actions available to it, to ensure that wage recovery processes for Queensland workers are simple, quick and low-cost. This should include further investigation of the following options:

- a) establishing a dedicated industrial division within the Queensland Magistrates Court, in line with the example in Victoria*
- b) investigating the inclusion of the Queensland Industrial Relations Commission or Industrial Court as an eligible state court under the Fair Work Act 2009 (Cth)*
- c) reviewing relevant forms and processes to ensure the legal process is simple and user friendly for workers and their representatives*
- d) waiving or reducing current court filing fees for wage theft matters.*

...

Recommendation 15

The committee recommends the Queensland Government legislate to make wage theft a criminal offence, where the conduct is proven to be deliberate or reckless.

The Queensland Government should consider the variety of models and approaches for criminalising wage theft that were presented to the inquiry and consult further with stakeholders in regard to a preferred model.¹⁰

The Queensland Government tabled its [response](#) to the Wage Theft Report on 15 February 2019, in which it supported Recommendations 8 and 15 'in-principle, subject to further consideration of the constitutional jurisdiction and implementation implications'.¹¹

¹⁰ Education, Employment and Small Business Committee, Report No. 9, 56th Parliament – *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*, 2019, pp x, xi.

¹¹ Queensland Government, *Parliamentary inquiry into wage theft in Queensland: Queensland Government response*, 2019, pp 3-4.

3 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

3.1 Criminalisation of wage theft

Currently in Queensland, while there is a specific criminal offence for employees who steal from their employers ('stealing by a servant'), there is no equivalent offence for an employer who steals from its employees.¹²

The Bill responds to recommendation 15 of the Wage Theft Inquiry by criminalising wage theft. It does this by amending the definition of 'stealing' in the Criminal Code¹³ to provide:

- h) an amount of an employee's unpaid wages (or other entitlements such as superannuation) is a thing capable of being stolen;*
- i) conversion of the unpaid amount to the offender's own use occurs when the amount is due to be paid to the employee (or to another person on the employee's behalf) under an Act, industrial instrument or agreement, but is not paid; and*
- j) the right of an employee (or another person) to receive payment in return for work performed is a form of special property.¹⁴*

The explanatory notes provide an 'amount payable' is intended to include the following types of wage theft:

- k) unpaid hours or underpayment of hours;*
- l) unpaid penalty rates;*
- m) unreasonable deductions;*
- n) unpaid superannuation;*
- o) withholding entitlements;*
- p) underpayment through intentionally misclassifying a worker including wrong award, wrong classification or by 'sham contracting' and the misuse of Australian Business Numbers; and*
- q) authorised deductions that have not been applied as agreed.¹⁵*

An individual or a corporation can be charged with stealing, with the department confirming that 'the offence can also be applied to a director or a senior officer of the corporation if it can be linked that they conspired or aided and abetted in the commission of the offence'.¹⁶

The proposed amendments to the Criminal Code aim to 'reflect the seriousness of wage theft and signal Parliament's intention to provide a deterrent to those employers who deliberately underpay and take advantage of their workers'.¹⁷

¹² Criminal Code, s 6.

¹³ Criminal Code, s 391.

¹⁴ Bill, cl 4.

¹⁵ Explanatory notes, p 5.

¹⁶ Tony James, Acting Assistant Director-General, Department of Education (DoE), Office of Industrial Relations (OIR), public briefing transcript, Brisbane, 27 July 2020, p 6.

¹⁷ DoE, correspondence dated 24 July 2020, p 5.

The department noted some types of wage theft may already be captured under the existing offence of fraud;¹⁸ and the offence of ‘fraudulent falsification of records’¹⁹ may also apply to a failure of an employer to keep employee records.²⁰

It was emphasised criminalisation of wage theft does not apply to unintentional conduct or honest mistakes. Tony James, Acting Assistant Director-General of the department, Office of Industrial Relations (OIR), stated:

*It is about deliberate and wilful egregious behaviour to deprive an employee of their entitlements. It is not aimed at an honest mistake which can occur in some cases with regard to the payment of wages. It is really very clearly directed at wilful or deliberate conduct.*²¹

In particular, it was noted that the offences of stealing and fraudulent falsification of records require the element of intent, which means they do not apply in circumstances where an employer has made an unintentional mistake.²²

The department confirmed that existing defences and excuses under the Criminal Code may apply to wage theft.²³ The following example was provided:

*... section 24 of the Criminal Code provides that a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as the person believed to exist. Also, while section 22 of the Criminal Code provides that ignorance of the law does not afford any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence, section 22(2) provides that a person is not criminally responsible, for an offence relating to property, if what he or she did with respect to the property was done (or omitted to be done) in the exercise of an honest claim of right and without intention to defraud.*²⁴

3.1.1 Stakeholder views and department’s response

Submitters expressed contrasting views about whether wage theft in Queensland should be criminalised, and the extent of criminalisation; however, broad support was provided by unions and individual workers who provided evidence to the committee.²⁵

3.1.1.1 Support for criminalisation

The committee heard from workers, including young workers, about their first-hand experience of wage theft by their employers.

Afshun Zareey, an individual who detailed his experience of wage underpayments and the questionable actions of his employers, provided strong support for criminalisation:

It is always the weakest in society who are exploited the most harshly by the strong. Criminalizing wage theft will force unscrupulous executives to reconsider their operational practices.

¹⁸ DoE, correspondence dated 24 July 2020, p 6.

¹⁹ Criminal Code, s 430.

²⁰ DoE, correspondence dated 24 July 2020, p 6.

²¹ DoE, public briefing transcript, Brisbane, 27 July 2020, p 3.

²² DoE, correspondence dated 24 July 2020, p 6.

²³ DoE, correspondence dated 24 July 2020, p 7.

²⁴ DoE, correspondence dated 24 July 2020, p 7.

²⁵ See, for example, submissions 001, 009, 017, 018, 019, 020, 025.

*It is my sincerest wish, hope, and desire to see Queensland lead the nation in enacting the strongest protections for vulnerable persons against exploitation. I strongly urge the committee to enact laws that criminalize wage theft.*²⁶

Tara Small shared her experience as an 18-year-old in the hospitality industry, in which she ‘had to work for free’ for 12 to 14 hour days ‘for days on end at events without getting paid’.²⁷ Ms Small said she did not know where to turn to or what she could do about her situation.²⁸

Ms Small told the committee:

*It is extremely important for these wage theft laws to go through for our hospitality workers who are already being underpaid, who are already on the lowest amount of pay that employers can put them on. We are struggling and we need this to go through to help us.*²⁹

The committee also heard from Declan Langlands, whose employer had allegedly made unlawful deductions from his wages including for till imbalances.³⁰ Declan said his fellow employees ‘were made to sign a contract in which we were expected to authorise those deductions’ and if employees did not provide their own personal debit card to pay for till imbalances, ‘we were made to sign forms authorising for money to be deducted from our wages’.³¹ Mr Langlands noted that he was aware that what his employers were doing ‘was not right’ but said he ‘was in a very vulnerable financial situation, so I let them exploit me’.³²

Mr Langlands agreed that the criminalisation of intentional and deliberate wage theft would act as a deterrent for employers, and concluded, ‘I cannot take money from a till without being punished. Why can they take money from my wages without being punished?’³³

Hannah Herrmann, Outreach Organiser from the Young Workers Hub (YWH), told the committee:

*Strong wage theft laws are as necessary as ever, acknowledging the effect of the COVID-19 pandemic and that young workers need their wages on time and in full. Criminalising wage theft is a major and critical step in achieving this.*³⁴

Submitters including the Queensland Council of Unions (QCU), the United Workers Union (UWU), YWH, the Australian Workers’ Union (AWU) and the Salvation Army provided support for the criminalisation of wage theft in Queensland.³⁵

The AWU, which represents workers from a range of industries found to be particularly affected by wage theft including agriculture, construction, hospitality, retail, tourism, and health, surveyed its membership and reported that 98.52 per cent of respondents supported making wage theft a crime.³⁶

²⁶ Submission 017, p 5.

²⁷ Public hearing transcript, Brisbane, 10 August 2020, p 2.

²⁸ Public hearing transcript, Brisbane, 10 August 2020, p 2.

²⁹ Public hearing transcript, Brisbane, 10 August 2020, p 2.

³⁰ Submission 018, pp 34-35; public hearing transcript, Brisbane, 10 August 2020, p 3.

³¹ Public hearing transcript, Brisbane, 10 August 2020, p 3.

³² Public hearing transcript, Brisbane, 10 August 2020, p 3.

³³ Public hearing transcript, Brisbane, 10 August 2020, p 3.

³⁴ Public hearing transcript, Brisbane, 10 August 2020, p 3.

³⁵ See submissions 009, 015, 018, 019, 020.

³⁶ Submission 019, p 1.

The UWU provided its support for criminalisation of wage theft, and suggested it will help to deliver ‘a level playing field’ for businesses.³⁷ Jo Briskey, Queensland Political Coordinator, UWU, told the committee:

*The UWU has been calling for the criminalisation of wage theft for some years. It is crucial that we send a clear and decisive message to businesses that have integrated it into their business model, stealing wages off employees. This needs to stop, especially now as we are trying to recover from the economic crisis caused by COVID.*³⁸

The QCU, Australasian Meat Industry Employees’ Union (AMIEU) and the UWU noted support for the criminalisation of wage theft suggested amendments to the scope and application of the offence.

In particular, the QCU recommended a number of changes to terminology and definitions in the Bill, to further clarify the types of wage theft that would be caught by the amended offence of ‘stealing’.³⁹ A similar argument was made by the Local Government Association of Queensland (LGAQ), which recommended ‘a clear definition on the types of employee conditions/entitlements that an allegation of wage theft might encapsulate’.⁴⁰

The QCU suggested the scope of the proposed definition of stealing is ‘too narrow to cover the field of the types of wage theft complaints that proliferate within industry and particular sectors’.⁴¹ Jacqueline King, Assistant General Secretary of the QCU further explained:

... the current definition in the bill focuses on the point of the payment of the wages as when the offence occurs. That, we believe, precludes a number of those systemic wage theft practices. We note, first of all, that the minister in the introductory speech referred to the fact that these provisions will cover matters such as cashback arrangements and sham contracting, but on our reading of the draft legislation as it is they will not...

*Specifically, we are concerned that it will not cover cashback arrangements. It will not cover wage related payments such as employment borrowings for inflated rents. You will hear from one of our witnesses about these particular issues. It will not cover sham contracting, which goes to the issue about how a court will interpret who is an employee. We suggest some recommendations in our submission around that particular point.*⁴²

Reference was also made by both the QCU and UWU to the recently passed Victorian legislation that includes a wage theft offence that has, in the QCU’s opinion, a wider definition and scope.⁴³

The AMIEU also referred to the Victorian legislation and recommended Queensland adopt a stand-alone offence specifically dealing with ‘wage theft’.⁴⁴

The department acknowledged the approach proposed by the Bill differs to the recent changes in Victoria, and noted that Victoria generally operates under a different framework for how criminal offences are legislated. In describing the framework provided by the Criminal Code in Queensland, the

³⁷ Public hearing transcript, Brisbane, 10 August 2020, p 5.

³⁸ Public hearing transcript, Brisbane, 10 August 2020, p 2.

³⁹ Submission 018, pp 10-16.

⁴⁰ Submission 013, p 2.

⁴¹ Submission 018, p 10.

⁴² Public hearing transcript, Brisbane, 10 August 2020, p 11.

⁴³ Queensland Council of Unions, submission 018, pp 10-19; United Workers Union, submission 020, pp 5-6.

⁴⁴ Submission 014, p 4.

department advised the Criminal Code 'is intended, as far as possible, to be an exhaustive statement of the law',⁴⁵ and 'which offence applies will depend on the particular facts and evidence available'.⁴⁶

The department acknowledged some terms were not specifically defined by the proposed legislation, including the types of entitlements that the offence might apply to. It was argued that the drafting of the offence was intended to provide the ordinary meaning of the terms used, and 'Defining terms may have the unintended consequence of narrowing the application of the offence'.⁴⁷ The department highlighted that the explanatory notes included a list of entitlements which may be captured by the offence of 'stealing' as amended by the Bill.

Maurice Blackburn supported the intention to criminalise wage theft and submitted, 'We agree that the criminalisation of deliberate or reckless wage theft, and the implementation of a simple, low-cost wage recovery process are worthy starting points for new legislation'.⁴⁸

Maurice Blackburn recommended industrial organisations and legal firms for industrial relations claims be given standing to prosecute wage theft and be able to seek costs from an employer on a successful prosecution.⁴⁹

In response, the department noted:

*Unions and others authorised by legislation may bring prosecutions for civil breaches (for example, as set out under the FW Act). The Criminal Code provides for how criminal prosecutions are commenced, and the Bill does not propose to alter these existing provisions.*⁵⁰

The LGAQ 'did not object' to criminalisation, but recommended amendments to ensure the legislation 'is designed to target that minority of employers who fall within the unscrupulous category'.⁵¹ In particular, LGAQ suggested further clarity was needed in the proposed legislation to provide for 'who and what is subject to the new level of governance and risk of criminal prosecution'.⁵²

In relation to liability, the department advised:

*Any 'person' may be liable for offences under the Criminal Code. This includes individuals, corporations and officers of corporations. A corporation can be held criminally liable for the knowledge or actions of its employees or agents, if they are considered to be the directing mind or will of the corporation. Generally, under the Criminal Code specific provision is not made for director's liability. However, parties who can be charged with an offence include any person who does or omits to do any act which constitutes wage theft, or aids, enables, counsels or procures another person to commit the offence.*⁵³

...

*Whether any particular director or employee of the company is acting in that way will depend on the circumstances of each case.*⁵⁴

⁴⁵ DoE, correspondence dated 6 August 2020, p 3.

⁴⁶ DoE, correspondence dated 6 August 2020, p 3.

⁴⁷ DoE, correspondence dated 6 August 2020, pp 3, attachment 1, p 13.

⁴⁸ Submission 008, p 2.

⁴⁹ Submission 008, p 2.

⁵⁰ DoE, correspondence dated 6 August 2020, attachment 1, p 8.

⁵¹ Submission 013, p 2.

⁵² Submission 013, p 2.

⁵³ DoE, correspondence dated 6 August 2020, attachment 1, p 8.

⁵⁴ DoE, correspondence dated 6 August 2020, attachment 1, p 14.

The LGAQ also raised a concern that the amendments to the Criminal Code would impact on reporting obligations by the local government in regards to matters under the *Crime and Corruption Act 2001* (CC Act). The LGAQ suggested the amended offence of ‘stealing’ for wage theft matters ‘would now constitute a complaint against a public official of official misconduct and, as such, would need to be referred to the CCC [Crime and Corruption Commission]’.⁵⁵ The LGAQ further explained:

Currently, if an employee of a council lodges a complaint against the council or council staffer for wrongfully paying them... the matter is investigated expeditiously in accordance with prescribed grievance processes which is generally hierarchical in nature i.e. starts with immediate supervisor and escalates up the chain if the matter is not resolved. If the matter is escalated to the CEO and still not resolved, the employee or third party may raise the matter as a dispute with the [Queensland Industrial Relations Commission].

*Now with the criminalisation of wage theft, and given its definition in the Bill and its coverage as prescribed in the Explanatory notes, a Public Official will be faced with the dilemma of having to refer some complaints regarding pay for an employee through to the CCC. As indicated, a Public Official does not have the discretion whether to refer the matter or try and resolve it locally - it must be referred.*⁵⁶

The LGAQ suggested if it is an unintended consequence that ‘wage disputes arising in the state and local government sectors would need to be referred to the CCC’, then the Bill should be amended accordingly, or the CCC should ‘be requested to exercise its power pursuant to [s] 40 to issue a notification that public officials are exempted from referring complaints concerning wages and conditions of employment for employees of the unit of public administration’.⁵⁷

In response to this concern, the department confirmed that ‘the Bill does not amend the CC Act and the amendments are not intended to change reporting requirements relating to corrupt conduct’.⁵⁸ The department noted complaints are required to be referred to the CCC ‘if a public official reasonably suspects that a complaint ... involves, or may involve, corrupt conduct’.⁵⁹ The department referred to Chapter 2 of the CCC guide *Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector*, which provides further guidance about what constitutes a ‘reasonable suspicion’.⁶⁰ The department also advised that the exercise of the CCC’s power under s 40 of the CC Act is a matter for the CCC.⁶¹

3.1.1.2 Opposition to criminalisation

Submitters including the Chamber of Commerce and Industry Queensland (CCIQ), National Retail Association (NRA), Restaurant & Catering Australia and the Housing Industry Association (HIA) did not support the criminalisation of wage theft in Queensland, for reasons including that:

- a new offence would add to the complexity of the existing industrial relations system⁶²

⁵⁵ Tony Goode, Workforce Strategy Executive, Local Government Association of Queensland (LGAQ), public hearing transcript, Brisbane, 10 August 2020, p 27.

⁵⁶ LGAQ, correspondence dated 13 August 2020, pp1-2.

⁵⁷ LGAQ, correspondence dated 13 August 2020, p 2.

⁵⁸ DoE, correspondence dated 19 August 2020, p 1.

⁵⁹ *Crime and Corruption Act 2001*, s 38.

⁶⁰ Crime and Corruption Commission Queensland, *Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector*, January 2020, Chapter 2.1.

⁶¹ DoE, correspondence dated 19 August 2020, p 1.

⁶² See, for example, submissions 006, 012, 010.

- existing federal laws are sufficient⁶³
- criminalisation could lead to unintended consequences.⁶⁴

The CCIQ stated:

*In our experience, wage underpayment is often done inadvertently and is a multifaceted and complex issue that will require an equally complex solution to resolve. Queensland businesses are already in a very vulnerable position, with an increased unemployment rate and steep falls in business confidence. Businesses have always found and are continuing to find workplace relations laws in Australia too complex to navigate. We are concerned that this bill will have unintentional consequences on Queensland businesses.*⁶⁵

The Australian Industry Group (Ai Group) strongly opposed the introduction of criminal penalties and suggested the existing regulatory framework (primarily under the federal jurisdiction), is adequate for 'addressing underpayments of employees' remuneration and applies appropriate sanctions to the small minority of employers who deliberately underpay their staff'.⁶⁶

Stephen Smith, Head of National Workplace Relations Policy, advised the committee:

While at first glance the introduction of criminal penalties for serious and deliberate underpayments might seem like a good idea, there are many reasons this is not in anyone's interests.

Firstly, implementing criminal penalties for wage underpayments would discourage investment and employment growth.

...

Secondly, exposing directors and managers of businesses to criminal penalties would operate as a major barrier to employers self-disclosing underpayment to the Fair Work Ombudsman.

*Thirdly, exposing directors and managers to criminal penalties is particularly unfair given the complexity of Australia's workplace relations system. Finally, a criminal case would not deliver any back pay to an underpaid worker. While a criminal case is underway, any civil case to recoup unpaid amounts would no doubt be put on hold by the relevant court until the criminal case was concluded, and that would mean that underpaid workers could be waiting years for redress.*⁶⁷

Similarly, the HIA submitted that the Fair Work Ombudsman (FWO) and Fair Work Act (FW Act) are the appropriate mechanisms to respond to wage theft.

The department responded:

*The Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 amended the Fair Work Act to introduce a higher scale of penalties for 'serious contraventions' of prescribed workplace laws. The Protecting Vulnerable Workers Amendments, and the efforts of the FWO, were noted by the Committee in the initial report. The Committee nonetheless regarded the existing federal compliance framework as insufficient to deter employers from engaging in wage theft and opted to recommend criminalisation.*⁶⁸

⁶³ See, for example, submissions 005, 006, 010, 012, 022.

⁶⁴ See, for example, submissions 005, 012, 026.

⁶⁵ Luisa Baucia, Policy Advisor, Chamber of Commerce and Industry Queensland, public hearing transcript, Brisbane, 10 August 2020, p 19.

⁶⁶ Submission 022, p 2.

⁶⁷ Public hearing transcript, Brisbane, 10 August 2020, p 16.

⁶⁸ DoE, correspondence dated 6 August 2020, attachment 1, p 24.

The Queensland Trucking Association submitted that ‘the characterisation of underpayments as “stealing” is inappropriate’ and suggested criminalisation would prevent the self-disclosure of underpayments to the FWO.⁶⁹

CCIQ, while clarifying that it ‘in no way supports the underpayment of wages and non-compliance within Australia’s workplace laws’, suggested wage theft was a ‘complex issue that will require an equally complex solution to adequately resolve’.⁷⁰

In contrast, Franchise Redress argued against the ‘complexity’ argument, and stated:

Almost every time we hear large companies running the ‘award system is too complex’ argument, it is after they have apparently solved the problem and found the underpayment argument.

...

However, it is not good enough for bigger or ASX-listed businesses to explain away considerable underpayment bills by saying it “was a mistake”, as they have the capacity to engage external advice, can have payroll systems audited regularly, and can/should be hiring appropriately qualified and experienced industrial relations specialists to manage their payroll.⁷¹

The NRA suggested some underpayments can be caused by ‘complexities of Australia’s modern award system which are difficult for most individuals to comprehend regardless of their skill and familiarity with these instruments’.⁷² The NRA referred in particular to ‘areas of mathematical uncertainty’, and stated ‘it is not unusual for different payroll systems, and indeed different individuals, to reach slightly different results as to the value of wages that are properly owing to particular employees’.⁷³

The NRA recommended the Bill be amended to ensure that ‘a mere difference in mathematical methodology does not amount to “intent” or “dishonesty”’.⁷⁴

The department noted that the offence of stealing requires intent and proof of fraudulent taking or conversion, and stated:

The inclusion of a defence against wage theft prosecutions where any underpayment has only occurred due to application of a particular calculation methodology is not required. The elements of stealing require proof of a fraudulent taking or conversion (that can be deemed through proof of a requisite intention in section 391(2)) and that the elements of fraud under section 408C of the Criminal Code will require proof of dishonesty.⁷⁵

The department stressed that existing defences and excuses under the Criminal Code will remain, and advised ‘sections 24 and section 22(2) of the Criminal Code may operate to alleviate criminal responsibility where an employer is acting on an honest and reasonable but mistaken fact or an honest claim of right without intention to defraud’.⁷⁶

⁶⁹ Submission 010, pp 1, 3.

⁷⁰ Submission 026, p 2.

⁷¹ Submission 027, p 2.

⁷² Submission 005, p 5.

⁷³ Submission 005, p 5.

⁷⁴ Submission 005, p 5.

⁷⁵ DoE, correspondence dated 6 August 2020, attachment 1, p 5.

⁷⁶ DoE, correspondence dated 6 August 2020, attachment 1, p 5.

The Australian Small Business and Family Enterprise Ombudsman (ASBFE Ombudsman) suggested before criminalisation is introduced, governments should 'ensure compliance is possible and can be assured'.⁷⁷ The ASBFE Ombudsman stated: '...all levels of government need to be helping small business through Australia's complex industrial relations system, not threatening further penalties if they unintentionally get it wrong'.⁷⁸

The ASBFE Ombudsman referred to its publication *COVID-19 Recovery Plan, May 2020* in which it notes complexities in the industrial relations setting, and recommends the introduction of a Small Business Award and regtech products 'to assist businesses navigate complex regulatory requirements and get certainty'.⁷⁹

The department noted modern awards, including the proposed Small Business Award, are the responsibility of the Fair Work Commission and federal government.⁸⁰ The department also emphasised that the offences of stealing and fraud under the Criminal Code operate in alignment with existing defences and excuses so that 'a person is not criminally responsible if they are acting honestly or without intent'.⁸¹ It explained:

*While the application of any defence or excuse will depend upon the circumstances of a particular case, section 24 of the Criminal Code provides for an excuse of honest and reasonable but mistaken belief as to a state of things and relieves criminal responsibility to the extent as if that state of things were true. Also, under section 22(2) of the Criminal Code, if a person is acting under an honest claim of right (i.e. honestly believes they are entitled to do what he is doing in relation to that property) and without intention to defraud, then they are not criminally responsible for an act or omission.*⁸²

3.1.1.3 Constitutional issues

Various submitters raised a concern that the proposed offence would be unconstitutional, due to a conflict between state and federal law.⁸³

In this regard, the NRA submitted:

...it would appear evident that the FW Act is intended to "cover the field" of compliance and enforcement of the terms of the FW Act to the extent of any inconsistency with State or Territory laws.

*As such, any attempt by the relevant enforcement agency to engage in a criminal prosecution under the Bill would be open to challenge on the grounds of inconsistency with section 109 of the Constitution.*⁸⁴

In response, the department advised:

The Queensland Government is confident about the validity of the provisions having regard to existing Commonwealth laws. If the Commonwealth introduces wage theft criminal laws, that

⁷⁷ Submission 004, p 1

⁷⁸ Submission 004, p 1.

⁷⁹ Australian Small Business and Family Enterprise Ombudsman, *COVID-19 Recovery Plan, May 2020*, pp 1, 17- 18.

⁸⁰ DoE, correspondence dated 6 August 2020, attachment 1, p 4.

⁸¹ DoE, correspondence dated 6 August 2020, attachment 1, p 3.

⁸² DoE, correspondence dated 6 August 2020, attachment 1, p 3.

⁸³ See, for example, submissions 005, 012, 022, 026.

⁸⁴ Submission 005, p 4.

*will be a matter for the Government to consider at that time, having regard to the specific nature of the reforms and drafting of relevant provisions.*⁸⁵

3.1.2 Penalties

The Bill proposes a maximum penalty for stealing by an employer against an employee of up to ten years' imprisonment.⁸⁶

The maximum penalty for the offence of fraud, where the fraud is conducted by an employer of the victim, is increased by the Bill to up to 14 years' imprisonment.⁸⁷

The department noted the Bill's proposed penalties reflect existing penalties for employees who steal from their employers.⁸⁸

According to the explanatory notes, 'The increase in the maximum penalties for stealing and fraud offences is warranted in light of the seriousness and prevalence of wage theft as identified by the Committee'.⁸⁹

3.1.2.1 Stakeholder views and department's response

The Connect Group, an approved employer under the federal government's Seasonal Worker Programme, suggested penalties for wage theft should be tiered, with options available to authorities with lesser burden of proof and evidence required.⁹⁰ Michael Fryzser, Managing Director of the Connect Group told the committee:

*...it is time to start wielding a bigger stick. That is my belief—that those who are at that most grievous end of this need to pay a price.*⁹¹

...

*Knowing the burden of proof in an absolute sense can be a bridge too far. These people have had more opportunities to perfect their craft and create uncertainty for authorities than those who are coming at them from the good end trying to stamp it out. We have to be wiser and stronger.*⁹²

Similarly, Mr Justin Cobbett, an individual who shared his personal experiences of wage theft with the committee during the Wage Theft Inquiry, recommended the new changes reflect:

*Where adverse action (or the threat of adverse action) is used as a way of coercing an employee into not recovering amounts payable, that adverse action should be treated as an aggravating factor of the proposed wage theft offence.*⁹³

The department noted that aggravating factors and mitigating circumstances are considerations for the relevant court in sentencing an offender.⁹⁴ Depending on the circumstances, the conduct may also

⁸⁵ DoE, correspondence dated 6 August 2020, pp 2, 4.

⁸⁶ Bill, cl 5.

⁸⁷ Bill, cl 6.

⁸⁸ DoE, correspondence dated 24 July 2020, p 1.

⁸⁹ Explanatory notes, p 3.

⁹⁰ Submission 002, p 1.

⁹¹ Public hearing transcript, Brisbane, 10 August 2020, p 30.

⁹² Public hearing transcript, Brisbane, 10 August 2020, pp 30-31.

⁹³ Submission 001, p 1.

⁹⁴ DoE, correspondence dated 6 August 2020, attachment 1, p 2.

amount to ‘compounding an indictable offence’ under s 133 of the Criminal Code, which is a separate offence.⁹⁵

The department also noted civil remedies would remain available to authorities, which operate under a different threshold and rules of evidence.

LAQ raised concern that increased penalties would result in unintended economic consequences:

*...resulting in bankrupting of individual employers and insolvency of businesses which will have significant impacts, particularly for small communities where unemployment is already statistically higher and these communities struggle to retain business activity in their regions.*⁹⁶

Maurice Blackburn noted the impact of the proposed penalties on corporations in particular, and stated:

We understand that if the offender is a corporation, section 181A of the Penalties and Sentences Act 1992 converts any possible sentence into a fine, thus office holders face no threat of imprisonment.

*This would also create the unwanted scenario where sole traders and those who conduct unincorporated entities [sic] are subject to criminal sanctions, while those who run incorporated entities are not.*⁹⁷

The department noted that the amended offences could apply to any ‘person’, which includes corporations and officers of corporations. It was also noted that parties who can be charged with an offence include ‘any person who aids, enables, counsels or procures another person to commit the offence’.⁹⁸

Dr Laurie Berg agreed that, ‘Increasing penalties for noncompliance with employment laws is part of the solution’, and noted she and Associate Professor Bassina Farbenblum ‘certainly believe that an employer’s belief that the wage theft will remain undetected and that the penalties if detected are not great contributes to that sense of impunity that drives the cycle of wage theft’.⁹⁹

The Ai Group did not support the introduction and increase of penalties as proposed by the Bill. Stephen Smith, Head of National Workplace Relations Policy at the Ai Group, clarified, ‘we support very tough civil penalties. That is what exists. We do not support criminal penalties’.¹⁰⁰ Mr Smith noted ‘... the Fair Work Act already includes very substantial penalties for those small minority of employers who deliberately underpay their staff. Those penalties were increased by up to 20 times in 2017, 10 times for underpayment penalties and 20 times for record-keeping penalties’.¹⁰¹

Similarly, the CCIQ recommended alternatives to increasing penalties, including by increasing the capacity of businesses to comply with the existing industrial relations framework. Luisa Baucia, Policy Advisor at CCIQ stated:

Businesses are already very vulnerable at the moment and we think this is going to exacerbate some of the disincentives that will have occurred due to the uncertainty of the economic situation. That is the thing I was talking about. A lot of businesses will self-report if they work out that they are underpaying their employees. However, if they are afraid there are going to be

⁹⁵ DoE, correspondence dated 6 August 2020, attachment 1, p 2.

⁹⁶ Submission 024, p 5.

⁹⁷ Submission 008, p 3.

⁹⁸ DoE, correspondence dated 6 August 2020, attachment 1, p 8.

⁹⁹ Public hearing transcript, Brisbane, 10 August 2020, p 8.

¹⁰⁰ Public hearing transcript, Brisbane, 10 August 2020, p 18.

¹⁰¹ Australian Industry Group, public hearing transcript, Brisbane, 10 August 2020, p 16.

*criminal sanctions on them, they are going to be less likely to self-report all the things I talked about earlier.*¹⁰²

3.1.3 Compliance and enforcement

The compliance and enforcement of the relevant wage theft offences under the Criminal Code would fall within the responsibility of the Queensland Police Service (QPS), with the prosecution process a matter for the QPS and the Director of Public Prosecutions (DPP).¹⁰³

The department noted that ‘A person, an inspector or a union representative can refer allegations of wage theft to the police for investigation’.¹⁰⁴

3.1.3.1 Stakeholder views and department’s response

Representatives of Queensland’s legal sector raised concerns with the compliance and enforcement of the Bill’s proposed amendments to the Criminal Code.

LAQ suggested:

(a) the cost and complexity of prosecuting will have the likely effect that the prosecutor authorities will be unable to adequately investigate and prosecute offenders without additional training and resourcing;

(b) criminally prosecuting offenders may unintentionally contribute to unemployment;

(c) criminalising the conduct is unlikely to alter the behaviour of offenders; and

*(d) successful prosecutions will not ensure that employees are paid and does not address, on a coordinated and national basis, the systemic issues impacting wage theft.*¹⁰⁵

Tinashe Makamure, Employment and Consumer Protection Lawyer, Civil Justice Services, LAQ, further explained to the committee:

*... complexity of prosecuting would have the likely effect of having prosecutorial authorities unable to investigate and prosecute offenders without additional training and resources. We formed this view after witnessing the last public hearing, where a submission was made that the existing expertise of the Office of Public Prosecutions and Queensland police prosecutions is sufficient to deal with the issue. In our view, we believe that more training and education would be required.*¹⁰⁶

Similarly, the QLS raised a concern that the amendments to the Criminal Code would ‘create uncertainty for employers and prosecuting agencies,’ and ‘whilst criminalisation of this conduct may have some general deterrent effect, it is unlikely to result in criminal charges for every breach that occurs’.¹⁰⁷

Maurice Blackburn expressed concern with the criminalisation of wage theft as proposed by the Bill and recommended that as an alternative to the amended offence provision, an ‘appropriately resourced Queensland inspectorate – and a State Fair Work Ombudsman’ would better address the issue of wage theft.¹⁰⁸

¹⁰² Public hearing transcript, Brisbane, 10 August 2020, p 21.

¹⁰³ DoE, correspondence dated 24 July 2020, pp7-8; Tony James, Acting Assistant Director-General, DoE, OIR, public hearing transcript, Brisbane, 27 July 2020, p 2.

¹⁰⁴ DoE, OIR, public hearing transcript, Brisbane, 27 July 2020, p 2.

¹⁰⁵ Submission 024, p 3.

¹⁰⁶ Public hearing transcript, Brisbane, 10 August 2020, p 22.

¹⁰⁷ Submission 023, p 6.

¹⁰⁸ Submission 008, p 3.

The department noted at its public briefing that the Bill was not ‘meant to replace the Fair Work Ombudsman’ but that criminalisation was ‘certainly meant to send a very strong signal to the community that wage theft is not an appropriate or condoned action’.¹⁰⁹ The department also advised that the ‘establishment of state-based inspectorate for FW Act matters and “State Fair Work Ombudsman” is a policy consideration for Government and is outside the scope of the Bill’.¹¹⁰

The QCU outlined concerns with the enforcement, resourcing and accountability in relation to the amendments to the Criminal Code. The QCU recommended that ‘The Government commit to developing detailed public guidelines for the investigation and prosecution of wage theft offences’.¹¹¹

The department noted ‘The Criminal Code provides for how criminal prosecutions are commenced, and the Bill does not propose to alter these existing provisions’.¹¹² Tony James, OIR, told the committee:

The police already investigate incredibly complex and difficult matters in terms of fraud, corporate crime and what have you. We are very confident that the police are capable and equipped to investigate these matters. Certainly in the development of support material for the community as to how to access wage recovery processes, I do intend to continue to work with the Queensland Police Service in terms of those matters.

...

*The criminalisation of wage theft is for egregious, wilful and deliberate behaviour of stealing an employee’s wage, but I believe that the Queensland police force is certainly very capable, does already do very complex investigations and it is a matter that I am assured will be monitored.*¹¹³

Some stakeholders commented on the impact of criminalisation for vulnerable cohorts such as migrant workers and young workers.¹¹⁴

YWH and Maurice Blackburn suggested vulnerable cohorts such as migrant workers and young workers, may be ‘reluctant or afraid to approach police’.¹¹⁵ Similarly, Franchise Redress raised concern that ‘Criminalisation might not have the desired effect if workers are too fearful of coming forward, or are ignorant to their wage entitlements and therefore don’t come forward’.¹¹⁶

The YWH further suggested that ‘the Queensland police or the DPP should be involved post compulsory conferencing when the parties understand the claim and its likelihood of success’.¹¹⁷ It suggested this would be an important step for a number of reasons including:

- young workers are unlikely to report wage theft to police
- international students are unlikely to report wage theft to police
- undocumented workers are unlikely to report wage theft to police
- workers with a criminal history are unlikely to report wage theft to police

¹⁰⁹ DoE, public briefing transcript, Brisbane, 27 July 2020, p 4.

¹¹⁰ DoE, correspondence dated 6 August 2020, p 8.

¹¹¹ Submission 018, p 20.

¹¹² DoE, correspondence dated 6 August 2020, p 8.

¹¹³ DoE, public briefing transcript, Brisbane, 27 July 2020, pp 5-7.

¹¹⁴ See, for example, submissions 008, 009, 021, 027.

¹¹⁵ Submission 008, p 3. See also, submissions 009, 021, 027.

¹¹⁶ Submission 027, p 5.

¹¹⁷ Hannah Herrmann, Outreach Organiser, Young Workers Hub (YWH), public hearing transcript, Brisbane, 10 August 2020, p 3.

- police are unlikely to have capacity or experience to deal with wage theft complaints.¹¹⁸

In response to these concerns, the department advised it would develop forms and guidance material to assist workers to pursue their wages recovery, including online resources with a ‘step by step guide’ for completing necessary court forms.¹¹⁹

The department also made clear that persons other than the victim can make a report of wage theft to the police, including an inspector or union representative.¹²⁰

3.2 Changes to the wage recovery process (civil proceedings)

The Bill proposes amendments to the *Industrial Relations Act 2016* (IR Act) to give effect to Recommendation 8 of the Wage Theft Report, by providing a ‘quick, simple and low-cost process to resolve civil claims for unpaid wages’.¹²¹

The Bill provides the Industrial Magistrates Court with jurisdiction to hear fair work wage recovery matters, allowing it to perform functions as an eligible court under the FW Act.

The department noted the Industrial Magistrates Court has been designed to operate similarly to the Queensland Industrial Relations Commission (QIRC), with less prescriptive and more informal rules to ‘better facilitate the resolution of wage recovery matters in a timely, inexpensive and informal manner’.¹²²

The department clarified that the Bill’s proposed changes to establish jurisdiction in the Industrial Magistrates Court would not affect existing jurisdiction and the ability for persons to bring wage claims in the Federal Circuit Court, Federal Court, or any eligible state court.¹²³

The Bill also provides for a small claims procedure to be utilised in the Industrial Magistrates Court in regards to FW Act claims of \$20,000 or less, and a small claims procedure for state-system workers for claims of up to \$50,000.

The small claims procedures provide a simplified court procedure, as the court is not bound by rules of evidence and procedure and may inform itself in the way it considers appropriate. It also allows proceedings to be conducted ‘in an informal manner without regard to legal forms and technicalities, and parties to the claim will not be represented by a legal representative or industrial organisation unless the court grants leave’.¹²⁴

3.2.1 Stakeholder views and department’s response

Generally, stakeholders supported the Bill’s aims to facilitate a quick, simple and low-cost process for wage recovery in Queensland.¹²⁵

The committee heard personal accounts of instances of underpayment by employers, with individuals noting lengthy timeframes for existing wage recovery processes. Adriaan Burgess, a member of the UWU, noted that his attempt to recover unpaid wages has taken over five years and is still ongoing.

¹¹⁸ YWH, submission 009, pp 3-4.

¹¹⁹ DoE, correspondence dated 6 August 2020, pp 7, 9.

¹²⁰ DoE, public briefing transcript, Brisbane, 27 July 2020, p 3.

¹²¹ Tony James, Acting Assistant Director-General, DoE, OIR, public briefing transcript, Brisbane, 27 July 2020, p 1.

¹²² DoE, correspondence dated 24 July 2020, p 9.

¹²³ DoE, correspondence dated 24 July 2020, p 9.

¹²⁴ DoE, correspondence dated 24 July 2020, p 9

¹²⁵ See, for example, submissions 013, 018, 020.

Mr Burgess told the committee:

Fair Work was a massive, drawn-out process. It took two years to sit in the courtroom and things like that. It was difficult because I had to put up with what was happening at work, and I was still getting ripped off even though they knew they were ripping me off. In the commission they said, 'This is the business model. Everyone's using it, so we're using it.'

The process all up has taken five years to get to here. We have already had a decision made over 12 months ago and still they are refusing to pay us. It is just not good enough.

...

They are actually saving money because they know that they only have to back pay us six years. It has been going on for 11 years, and it is still going on. We are going into the 12th year, and they still only have to pay us back six years and they are dragging it out.¹²⁶

Mr Burgess expressed his support for a faster, simpler, cost-recovery mechanism and said:

We need a quicker way to get our wages back. It is not fair. We have bills to pay. We have rent to pay. It is hard enough with COVID. We really need a decision made by parliament to make it quicker for us to recover our wages.¹²⁷

YWH stressed the need for a low-cost and effective wage recovery process which is supported by clear information and is easily accessible to young workers.¹²⁸

Individual submitter Afshun Zareey supported a simpler, cost-effective method of wage recovery, noting, 'Those with the most limited financial resources are the most likely to be exploited'.¹²⁹

Samuel McGrath, a worker from the manufacturing industry, outlined his experience with wage recovery under the FW Act and Federal Circuit Court. Mr McGrath noted even though his court case was successful and his employer was ordered to pay \$8,800, his employer ignored the order and has since declared bankruptcy. Mr McGrath advised he is now out of pocket for both unpaid wages and costs incurred as part of the court process.¹³⁰

The Bill includes amendments to definitions under the IR Act, including by inserting definitions for fair work claims.¹³¹ Master Builders and the NRA commented on the representation of industrial organisations in industrial relations proceedings. Master Builders recommended the definition of 'industrial organisation' in s 507 of the IR Act be amended to explicitly include state registered industrial organisations.¹³²

The department noted the definitions in the Bill are consistent with the definitions in the FW Act and will ensure consistency in hearing claims under the FW Act in Queensland courts.¹³³ It was further noted that 'affiliation of state-registered organisations with federal industrial associations would allow state organisations' members to be represented by the federal organisation'.¹³⁴

¹²⁶ Public hearing transcript, Brisbane, 10 August 2020, p 6.

¹²⁷ Public hearing transcript, Brisbane, 10 August 2020, p 2.

¹²⁸ Public hearing transcript, Brisbane, 10 August 2020, p 3.

¹²⁹ Submission 017, p 5.

¹³⁰ Public hearing transcript, Brisbane, 10 August 2020, p 13.

¹³¹ Bill, cl 9.

¹³² Submission 007, p 1.

¹³³ DoE, correspondence dated 6 August 2020, pp 7-8.

¹³⁴ DoE, correspondence dated 6 August 2020, pp 7-8.

Dr Laurie Berg raised a concern regarding ‘a significant barrier inhibiting international students in particular from coming forward to recover their unpaid wages’ in relation to student visas. Dr Berg explained:

... condition 8105 in the student visas which permit work for up to 40 hours per fortnight while their course is in session. Where students have breached this visa condition, that can be a further really potent barrier to taking action. It extends beyond simply working in excess of that visa condition.

We undertook another survey last year of 5,000 international students which found that the large majority of international students hold a number of misconceptions in relation to that condition.

...

They believed they were complicit in the underpayment which then fuels their desire to accept wage theft in silence and not take action. We believe that these fears may be a further inhibitor to the effectiveness of a new small claims jurisdiction in Queensland.¹³⁵

Dr Berg noted that this issue had been reported to the federal parliament with a recommendation that changes be made to visa conditions or current protocol, and suggested the Queensland government ‘should encourage the federal government to adopt those measures and perhaps explore the possibility of a protocol with the Department of Home Affairs in relation to this small claims process’.¹³⁶

LAQ acknowledged that the Bill is aiming to address deficiency in the current wage recovery mechanisms available through the Magistrates Court and Federal Circuit Court but suggested the Bill ‘does not does not appear to provide a particular incentive for employees to choose this over the other mechanisms that are already in place’.¹³⁷

3.2.2 Conciliation

The Bill proposes introducing a conciliation process for fair work claims which are pursued in an Industrial Magistrates Court.¹³⁸

The Bill provides that the registrar may refer a claim for conciliation, and that the referral must occur as soon as practicable after the claim is started.¹³⁹ If a party does not wish to participate in conciliation, the party must notify the registrar, and the conciliation does not proceed.¹⁴⁰

The explanatory notes state the conciliation process ‘is intended to facilitate low cost conciliation of matters as much as possible, while allowing for parties to not go to conciliation where they have no intention of participating in the process’.¹⁴¹

Industrial commissioners under the IR Act are conciliators under the Bill’s proposed framework, and are empowered to decide the procedure for conciliation.¹⁴²

¹³⁵ Public hearing transcript, Brisbane, 10 August 2020, p 8.

¹³⁶ Public hearing transcript, Brisbane, 10 August 2020, p 8.

¹³⁷ Public hearing transcript, Brisbane, 10 August 2020, p 22.

¹³⁸ Bill, cl 9, subdivision 2.

¹³⁹ Bill, cl 9, s 507C.

¹⁴⁰ Bill, cl 9, s 507C(4).

¹⁴¹ Explanatory notes, p 6.

¹⁴² Bill, cl 9, ss 507D-E.

If an agreement is reached in conciliation, an order can be made by the Industrial Magistrates Court to give effect to the agreement.¹⁴³

The Bill makes it clear that evidence provided or admissions made during conciliation are only admissible at a hearing of the claim (or other civil proceedings) if all parties consent.¹⁴⁴

3.2.2.1 *Stakeholder views and department's response*

Organisations representing a wide variety of stakeholders (including unions and legal bodies) argued the conciliation process under the Bill should be mandatory, not voluntary (as currently drafted).¹⁴⁵

The YWH noted the experiences of its members included where employers are:

*...ignoring letters of demand, correspondence and other attempts at communication until the young worker simply gives up. Compulsory conferencing will ensure that all parties are obligated to discuss wage theft and possible remedies.*¹⁴⁶

Legal bodies which submitted to the inquiry made similar arguments, with Maurice Blackburn stating, 'In our view conciliation must be compulsory to be effective. This will be the most effective means of streamlining and resolving claims quickly'.¹⁴⁷

Similarly, LAQ noted:

*It is the experience of LAQ that in matters before the FWC where conciliation conferences are not compulsory, employers will often not consent to attending. Where this is the case, the amendment denies an applicant the opportunity to engage in a conciliation in good faith and potentially resolve the dispute without requiring a hearing to decide the issues in dispute.*¹⁴⁸

The QLS provided detailed feedback on the Bill's proposed conciliation process, suggesting a number of amendments including that the process be extended to Magistrates Court claims and expanding the definition of who can be a conciliator under the IR Act to include industrial magistrates.¹⁴⁹

QLS expressed strong concern that the conciliation process proposed is not compulsory:

*QLS is concerned that some employers will not consent to attending conciliation. Enlightened employers may well see early conciliation as an opportunity to resolve the matter, but many employers are likely to consider that applicants will not proceed to a hearing because of the time, cost and emotional investment often required in legal action, particularly where parties are self-represented. Delay and obfuscation are tools often utilised in this process.*¹⁵⁰

Ellie Bassingthwaighe, Industrial Law Committee Member, Queensland Law Society, further emphasised the need for compulsory conciliation at the public hearing:

It is the society's view that these matters should proceed by way of compulsory conciliation convened at the earliest possible occasion for the following reasons. As the committee noted in its report A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland, it is imperative that, in order to address the practical impacts of wage theft for victims of this soon-to-be crime, there be an effective system of wage recovery and one that can

¹⁴³ Bill, cl 9, s 507H.

¹⁴⁴ Bill, cl 9, s 507I.

¹⁴⁵ See, for example, submissions 008, 009, 018, 019, 020, 023, 024.

¹⁴⁶ Public hearing transcript, Brisbane, 10 August 2020, p 3.

¹⁴⁷ Submission 008, p 4.

¹⁴⁸ Submission 024, p 7.

¹⁴⁹ Submission 023.

¹⁵⁰ Submission 023, pp 3, 4.

*be appropriately described as simple, quick and effective. Compulsory conciliation is, in the society's view, a necessary feature of such a system.*¹⁵¹

Ms Bassingthwaight further explained:

*... in the society's view the presence of an opt-out method of compulsory conciliation significantly undermines the aims of this bill. It will potentially allow employers to drag out the wage recovery process, often at times exaggerating the power and resource imbalances that may have led to the underpayment occurring in the first place. There is no apparent policy rationale for the removal of the compulsory conciliation, as we note that this is already a feature of the current wage recovery mechanisms that exist at a Magistrates Court level in Queensland.*¹⁵²

QLS recommended the conciliation process occur regardless of whether parties consent, and that consideration be given to enabling the court to impose a penalty for non-attendance of conciliation.¹⁵³

QLS also recommended the Bill be amended to require parties to make a reasonable attempt at conciliation, suggesting the conciliator should 'be satisfied that a reasonable attempt at conciliation has been made by the parties'.¹⁵⁴

The department responded to stakeholder concerns by suggesting mandatory conciliation through the Industrial Magistrates Court would not be appropriate where a party does not wish to participate and may 'act to disrupt and delay the efficient resolution of the wage recovery claim'.¹⁵⁵

The department also stated, 'To keep costs for parties as low as possible, it is intended that conciliation will preferably occur before a defence is required to be filed'.¹⁵⁶

The UWU suggested the mandatory conciliation process that currently exists in the Magistrates Court¹⁵⁷ 'speeds up claims processing and significantly reduces the number of litigated claims that progress to Court hearing stage', and by having a voluntary conciliation process, the Bill does not achieve its objective to ensure a simple, quick and low-cost wage recovery process for Queensland workers.¹⁵⁸

The UWU argued:

*Making conciliation optional will risk employers subject to claims electing in greater numbers to have their matter heard and determined by a Court, which will slow the claims process down and make it more difficult and expensive for a worker and their representatives to prosecute. Furthermore, the wage recovery mechanism is a no costs jurisdiction so there is no incentive for employers to participate in conciliation if it is not mandatory.*¹⁵⁹

¹⁵¹ Public hearing transcript, Brisbane, 10 August 2020, p 23.

¹⁵² Public hearing transcript, Brisbane, 10 August 2020, p 23.

¹⁵³ Submission 023, p 3.

¹⁵⁴ Submission 023, p 4.

¹⁵⁵ DoE, correspondence dated 6 August 2020, p 9.

¹⁵⁶ DoE, correspondence dated 6 August 2020, p 9.

¹⁵⁷ See *Magistrates Court Act 1921*, part 5A.

¹⁵⁸ Submission 020, p 4.

¹⁵⁹ Submission 020, p 7.

The QCU stated it had a ‘major concern’ with the voluntary nature of the conciliation process proposed by the Bill. Jacqueline King, QCU explained:

*... our view is that an opt-out conciliation model will only serve to promote further litigation, particularly where we are dealing with vulnerable low-paid workers who can be dissuaded from continuing down the track because of the additional costs they would incur having to go to a hearing. A small claims procedure is still a hearing. We would prefer mandatory conciliation because it is a conference where all of the parties can sit down in a much more relaxed and informal manner than even a small claims proceeding, which is still a hearing before a court even though it may have some more relaxed procedures.*¹⁶⁰

Jacqueline King, QCU also referred to data which reported that ‘during the 2017-18 period 67 per cent of claims that currently go to the Magistrates Court were settled in conciliation’.¹⁶¹ Ms King summarised:

*It works. It has a high success rate. It has also been the cornerstone of our industrial relations system for other matters. It is about getting people together and, if I could put it this way, it is about knocking heads together if possible in an informal way and getting people focused on getting an outcome, as opposed to a legalistic process where you go through rules and forms and evidence. Even in a small claims proceeding, there is still some technicality associated with that.*¹⁶²

The QCU referred to consultation undertaken with the OIR, in which it suggested the department advised the ability to have a compulsory conciliation process under the Industrial Magistrates Court may raise legal issues and should be a voluntary system for ‘constitutional or other legal reasons’.¹⁶³

The QCU sought and provided legal advice it had received on this issue and stated, ‘This advice is very clear that there is no legal impediment (Constitutional or otherwise) against retaining the existing compulsory conciliation system for fair work claims’.¹⁶⁴

The QLS provided its opinion that inconsistency would be unlikely:

*...in light of the Commonwealth parliament explicitly conferring jurisdiction on State Courts in respect of fair work claims and in circumstances where s.79 of the Judiciary Act 1903 (Cth) clearly contemplates that such claims be subject to the procedures of the court in which the claim is commenced.*¹⁶⁵

The department advised that the Bill’s conciliation process aligns with the framework under the FW Act,¹⁶⁶ and to ensure consistency with the FW Act, the Bill does not include compulsory conciliation prior to an Industrial Magistrates Court decision.¹⁶⁷

The department further highlighted the policy intent of the conciliation process was to assist in a quick, low-cost process for wage recovery, and suggested parties who wished to engage in reasonable attempts at settlement would likely do so voluntarily, rather than progress through a formal court hearing.¹⁶⁸

¹⁶⁰ Public hearing transcript, Brisbane, 10 August 2020, p 12.

¹⁶¹ Public hearing transcript, Brisbane, 10 August 2020, p 14.

¹⁶² Public hearing transcript, Brisbane, 10 August 2020, p 14.

¹⁶³ Submission 018, p 25.

¹⁶⁴ Submission 018, p 25.

¹⁶⁵ Submission 023, p 4.

¹⁶⁶ DoE, correspondence dated 6 August 2020, pp 9, attachment 1, p 9.

¹⁶⁷ DoE, correspondence dated 6 August 2020, pp 3, 10.

¹⁶⁸ DoE, correspondence dated 6 August 2020, pp 8-9.

The explanatory notes provide:

*All these measures are to encourage conciliation in the first instance and to do so in a way that allows parties to go to conciliation without having to incur costs seeking legal representation or preparing a defence. If any party does not wish to participate in conciliation, they must notify the registrar of that fact as soon as practicable and before a conciliation conference starts. Again, this is intended to facilitate low cost conciliation of matters as much as possible, while allowing for parties to not go to conciliation where they have no intention of participating in the process.*¹⁶⁹

The QLS argued that the justification provided by the department was not sufficient, with Ms Bassingthwaighe stating:

*In respect of any concern that a party ordered to participate in a conciliation against their will is unlikely to engage in genuine settlement discussions, we do not consider this a sound justification for not requiring conciliation at an early stage. In the society's view, at the very worst, if a compulsory conciliation does not produce a resolution of the issue, does not produce a settlement of the underpayment claim, it will at least help the parties narrow either the factual or the legal matters in dispute, or in some cases both, to allow the claim to progress through the Industrial Magistrates Court in a more efficient and streamlined matter. It is the society's strong submission that compulsory conciliation be included as a feature of this wage recovery mechanism.*¹⁷⁰

In addition to stakeholder's views regarding whether the conciliation process should be mandatory, Dr Laurie Berg commented on the accessibility of process by vulnerable cohorts. Dr Berg suggested the conciliation process proposed by the Bill 'would of course significantly reduce the complexity and time of resolution of a wage claim for many workers', but noted that 'the significant power disparity between migrant workers and their employers in many cases is going to leave them at a severe disadvantage unless they have an industrial or legal representative present'.¹⁷¹ To address this, Dr Berg recommended that any wage recovery process 'has to be accompanied by well-resourced individual assistance to workers to calculate their claims along with legal advice and representation'.¹⁷²

Committee comment

Stakeholders representing a variety of industries strongly argued that the conciliation process proposed by the Bill to apply to fair work claims in the Industrial Magistrates Court, be mandatory.

It is noted that the Fair Work Commission and QIRC both include a number of resources to assist parties to resolve disputes and disagreements prior to lodging a court claim. The Fair Work Commission provides:

*Helping employers and employees solve workplace disputes or disagreements is one of the main functions of the Fair Work Commission. One of the objects of the Fair Work Act 2009 is 'providing accessible and effective procedures to resolve grievances and disputes.'*¹⁷³

¹⁶⁹ Explanatory notes, p 6.

¹⁷⁰ Public hearing transcript, Brisbane, 10 August 2020, p 24.

¹⁷¹ Public hearing transcript, Brisbane, 10 August 2020, p 7.

¹⁷² Public hearing transcript, Brisbane, 10 August 2020, p 7.

¹⁷³ Fair Work Commission, *Resolving disputes*, <https://www.fwc.gov.au/disputes-at-work/how-the-commission-works/resolving-disputes>.

The Fair Work Commission assists persons in mediation or conciliation, prior to conducting formal hearings. It is noted that conciliation is not mandatory under the Federal Circuit Court of Australia, which is an eligible court to hear fair work claims.¹⁷⁴

It seems clear, from evidence provided by stakeholders to this inquiry and the committee's previous Wage Theft Inquiry, that these existing mechanisms are not effectively assisting victims of wage theft to recover their entitlements.

The committee notes the department's concern that parties who do not wish to participate in conciliation may act to disrupt or delay a wage recovery claim.

However, the committee suggests that the benefits of undertaking conciliation would outweigh the risks, and agrees with the suggestion of the Queensland Law Society, that risk could be mitigated by the requirement for employers to engage in 'reasonable attempts' at conciliation (with what is reasonable to be determined by the conciliator).

Recommendation 2

The committee recommends the conciliation process for fair work claims commenced under the Industrial Magistrates Court, be mandatory, with employers and employees required to make 'reasonable attempts' at reaching agreement.

3.2.3 Legal representation

Section 530(1)(e) of the IR Act provides when a person can be represented by a lawyer in proceedings before an Industrial Magistrates Court.

Legal representation is permitted when:

- (i) *all parties consent; or*
- (ii) *the proceedings are brought personally by an employee and relate to a matter that could have been brought before a court of competent jurisdiction other than an Industrial Magistrates Court; or*
- (iii) *the proceedings are for the prosecution of an offence*¹⁷⁵

The Bill amends s 530(1)(e) of the IR Act to allow parties to be legally represented in a wage claim before the Industrial Magistrates Court only with the leave of the court.¹⁷⁶

The department stated this will allow 'scope for legal representatives to assist where the court considers representation would be beneficial for the resolution of the matter'.¹⁷⁷ The department noted that an Industrial Magistrate can consider any relevant matters when considering if leave should be granted.¹⁷⁸

3.2.3.1 Stakeholder views and department's response

The QLS, NRA and HIA commented on the Bill's provisions regarding legal representation in civil proceedings.

¹⁷⁴ Section 34 of the *Federal Circuit Court of Australia Act 1999*, allows a matter to be referred to mediation, but does not require all matters to be referred.

¹⁷⁵ IR Act, s 530(1)(e).

¹⁷⁶ Clause 12.

¹⁷⁷ DoE, correspondence dated 24 July 2020, p 10.

¹⁷⁸ DoE, correspondence dated 6 August 2020, attachment 1, p 6.

The NRA stated:

*The NRA opposes in the strongest possible terms any legislative provision under which any person, be they an individual or a body corporate, may be denied the right to legal representation in proceedings in which they may be subject to the imposition of a penalty.*¹⁷⁹

The QLS noted legal representation is currently allowed under s 530(1)(e) of the IR Act and questioned the limitation proposed by the amendments, suggesting it 'will likely act as a disincentive for lawyers to use this jurisdiction'.¹⁸⁰

The department noted the Bill's proposed amendments reflect the FW Act, which requires leave of the court for a person to have legal representation in small claims proceedings.¹⁸¹ The department advised:

*The combination of the less formal approach of the [Industrial Magistrates] Court, the new provisions to facilitate conciliation, the utilisation of the small claims procedures, and the use of legal representatives with the leave of the court, will assist to achieve the aim to resolve wage recovery matters in a timely, inexpensive and informal manner.*¹⁸²

3.3 Interaction between criminal and civil proceedings

During the public briefing on the Bill, the committee questioned the department about the interaction between criminal and civil proceedings, and guidance for victims of wage theft regarding the processes they should follow.

The department noted the criminal and civil avenues are separate and distinct processes, and 'one does not necessarily follow the other'.¹⁸³

The department further explained:

DoE is not aware of any law that would prevent civil and criminal proceedings being pursued in relation to particular 'wage theft' related conduct. Section 702 of the Criminal Code specifically provides that except when expressly so provided, the prosecution or conviction of a person for an offence does not affect any civil remedy which any person aggrieved by the offence may have against the offender.

...

While DoE is not aware of any general prohibition on the use of evidence from a civil proceeding in a related criminal proceeding and cannot provide legal advice to the Committee, it is noted that the common law recognises a privilege attaching to communications made in aid of settlement, also referred to as the 'without prejudice' privilege. The general rule is that 'communications between parties which are genuinely aimed at settlement whether oral or in writing, cannot be put in evidence without the consent of both parties in the event of those negotiations for settlement being unsuccessful'. However, there are limits to this privilege, including in relation to criminal proceedings given the public interest in investigation and prosecution of crime (Cross on Evidence, The Hon. JD Heydon AC, 25375).

In Queensland, the rule of evidence in relation to 'without privilege' is reflected in various statutory provisions relating to conciliation during civil proceedings, including new sections 5071

¹⁷⁹ Submission 005, p 8.

¹⁸⁰ Submission 023, p 4.

¹⁸¹ DoE, correspondence dated 6 August 2020, p 10; *Fair Work Act (Cth) (FW Act)*, s 548.

¹⁸² DoE, correspondence dated 6 August 2020, p 10.

¹⁸³ Tony James, Acting Assistant Director-General, DoE, OIR, public briefing transcript, Brisbane, 27 July 2020, p 3.

*and 5471 of the IR Act to be inserted by the Bill which provides that evidence of anything done or said, or an admission made, during the conciliation process for a fair work claim is admissible at the hearing of the claim or in another civil proceeding or elsewhere only if all the parties agree. However, these provisions expressly provide that civil proceeding does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.*¹⁸⁴

The department also commented on the potential for a victim of wage theft, where an employer has been convicted of a criminal wage theft related offence, to use this fact as part of evidence relied on in a civil proceeding. In this situation, the department noted:

*While ultimately what evidence is relied on in a civil proceeding is a matter for the parties, DoE notes that sections 78-82 of the Evidence Act relate to the admissibility of criminal convictions in civil proceedings. Specifically, section 79 provides that in any civil proceeding the fact that a person has been convicted by a court of an offence is admissible in evidence for the purpose of proving, where to do so is relevant to any issue in that proceeding, that the person committed that offence and in any civil proceeding in which by virtue of this section a person is proved to have been convicted by a court of an offence, the person shall, unless the contrary is proved, be taken to have committed the acts and to have possessed the state of mind (if any) which at law constitute that offence.*¹⁸⁵

It was also noted that the Industrial Magistrates Court, in hearing a small claims matter, would not be bound by rules of evidence and procedure, and may act in an informal manner.¹⁸⁶

3.3.1.1 Stakeholder views and department's response

Master Electricians Australia noted the Bill's amendments could mean fair work claims could be brought under multiple jurisdictions (FWO, Industrial Magistrates Court and police).¹⁸⁷

The department noted wage recovery claims can already be brought in the Federal Circuit Court, Federal Court or Magistrates Court. It further explained:

Section 702 of the Criminal Code preserves the right of injured parties to pursue civil action against offenders. In addition, the FW Act also provides provisions in relation to civil proceedings and criminal proceedings (Chapter 4, Part 4-1, Division 4). Accordingly, employers may be required to respond to both civil and criminal proceedings.

*If parallel civil proceedings are commenced, the courts have an inherent jurisdiction to stay their own proceedings in order to prevent vexatious or oppressive use of the forum.*¹⁸⁸

3.4 Impact of non-disclosure/settlement agreements

During the Wage Theft Inquiry, the committee heard from a number of witnesses who had been subject to non-disclosure agreements as part of their attempts at wages recovery. These agreements added a further layer of complexity and challenge for victims of wage theft in navigating the wage recovery process.

¹⁸⁴ DoE, correspondence dated 3 August, pp 3, 5.

¹⁸⁵ DoE, correspondence dated 3 August, p 5.

¹⁸⁶ DoE, correspondence dated 3 August 2020, p 5; FW Act, s 548.

¹⁸⁷ Submission 11, p 2.

¹⁸⁸ DoE, correspondence dated 6 August 2020, pp 7-8; attachment 1, p 11.

The effect of the Bill when a non-disclosure or other settlement agreement applied, was raised by the committee. Tony James, OIR, explained:

*... you cannot agree away an award entitlement. I cannot agree to accept less than the award. An employer cannot agree to pay less than the award. If an employee had signed some sort of full and final settlement when they left, I would suggest that that will not hold if the employee was to subsequently lodge a complaint. For example, if the employee agreed they would not receive their holiday pay, I would suggest that employee would have a claim for holiday pay if it is valid under their industrial instrument and they can take it through the Industrial Magistrates Court. I imagine those things would be part of the evidence that would come into the consideration of the industrial magistrate or in the conciliation process by the very experienced industrial relations commissioners who are the conciliators in these matters.*¹⁸⁹

The department provided further advice regarding the impact of legally binding deeds and agreements between parties.

In relation to civil proceedings, where victims have signed agreements (outside of a court process) prior to commencement of the Bill, the department advised:

The signing of a legally binding deed of release does not prevent a worker from lodging a wage recovery claim in the Industrial Magistrates Court. However, a legally binding deed of release could act as an impediment to the wage recovery claim progressing to hearing before an Industrial Magistrates Court.

...

*An agreement entered into between the parties will usually be legally binding and may act as a bar to an employee making any further claims arising out of the employment contract that are the subject of the deed.*¹⁹⁰

The department noted, however, that exceptions to the general rule may apply and that employees entering into any agreement should be given the opportunity to seek independent legal advice about the implications of the agreement.¹⁹¹

The department summarised:

*A workplace right includes the ability to initiate or participate in a proceeding under a workplace law and to make a complaint or inquiry in relation to their employment. If an employee believes that their general protections were impacted by adverse action in regard to signing a deed of release the employee may have a claim under the IR Act or the FW Act.*¹⁹²

In response to a request for additional information about whether a non-disclosure or other signed agreement could affect any action under the Criminal Code, the department advised that these agreements would not prevent a prosecution for an offence under the Criminal Code, including for the Bill's amended offence of stealing.¹⁹³

¹⁸⁹ Public briefing transcript, Brisbane, 27 July 2020, p 6.

¹⁹⁰ DoE, correspondence dated 3 August 2020, p 1.

¹⁹¹ DoE, correspondence dated 3 August 2020, p 2.

¹⁹² DoE, correspondence dated 3 August 2020, p 2.

¹⁹³ DoE, correspondence dated 3 August 2020, pp 2-3.

The department noted:

*Generally, while breaches of a non-disclosure or confidentiality agreement can have serious consequences, including possible legal action, it is understood that they do not oblige people who have signed them to maintain secrecy about unlawful behaviour.*¹⁹⁴

The department also clarified the impact of agreements between employers and employees on evidence gathering for an offence under the Criminal Code.

The impact or relevance of any non-disclosure or settlement agreement between an employer and worker on the investigation of an alleged offence will depend on the particular circumstances, however, it is possible for example that the agreement might itself form part of the evidence sought to be relied upon by the prosecution to prove fraud or stealing.

*In criminal proceedings, the prosecution has a duty to disclose all relevant information, documents or other things obtained during the investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person. The obligation to disclose any agreement between a victim and alleged offender would rest with the prosecuting authority, not the individual subject to the agreement.*¹⁹⁵

3.5 Implementation of the Bill

The proposed amendments to criminalise wage theft under the Criminal Code are to commence on assent.¹⁹⁶ This approach is consistent with s 11 of the Criminal Code, which states:

A person [cannot] be punished for doing or omitting to do an act unless the act or omission constituted an offence under the law in force when it occurred; nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when the person is charged with the offence.

The proposed changes to the civil processes regarding wage recovery will commence on a date fixed by proclamation.¹⁹⁷ These changes will apply retrospectively, allowing a person to recover wages from the point at which they became due.¹⁹⁸

The department advised activities which would support commencement of the Bill would likely include website re-design and creation of new forms designed to provide a simple way of bringing a claim.¹⁹⁹ Tony James, OIR, told the committee:

*A redesigned claim form will ensure that as much relevant information as possible is provided at the outset of the proceedings avoiding lengthy discovery processes. Other guidance material will be developed to assist those who use the Industrial Magistrates Court.*²⁰⁰

3.5.1 Stakeholder views and department's response

Stakeholders highlighted the need for resources and assistance to support workers to recover unpaid wages under the proposed amendments of the Bill.

¹⁹⁴ DoE, correspondence dated 3 August 2020, p 2.

¹⁹⁵ DoE, correspondence dated 3 August 2020, p 3.

¹⁹⁶ DoE, correspondence dated 24 July 2020, p 10.

¹⁹⁷ Bill, cl 2.

¹⁹⁸ Tony James, Acting Assistant Director-General, DoE, OIR, public briefing transcript, Brisbane, 27 July 2020, p 6.

¹⁹⁹ DoE, correspondence dated 24 July, p 10; Tony James, Acting Assistant Director-General, DoE, OIR, public briefing transcript, Brisbane, 27 July 2020, p 3.

²⁰⁰ DoE, correspondence dated 24 July, p 10; Tony James, Acting Assistant Director-General, DoE, OIR, public briefing transcript, Brisbane, 27 July 2020, p 3.

The UWU suggested resourcing to assist implementation of the Bill's proposed changes to wage recovery should include the appointment of qualified industrial commissioners as industrial magistrates to 'allow for the determination of matters to be made quickly and cost-effectively'.²⁰¹

The QLS highlighted the need for education of the public on the availability of wage recovery processes, and suggested there would be particular need to review resources guiding the processes to be followed in the Industrial Magistrates Court.²⁰²

Dr Laurie Berg and Associate Professor Bassina Farbenblum emphasised the need for appropriate resources and assistance for workers to access wage recovery processes, in particular for migrant workers. They noted:

*Migrant workers face substantial challenges in ventilating their claims, correctly identifying issues and adducing evidence of their claim. In particular, it is virtually impossible for most migrant workers to calculate the precise amount they have been underpaid as this involves correctly identifying the worker's classification under the relevant modern award, identifying applicable loadings and penalties, and applying these to relevant hours within each shift worked.*²⁰³

Dr Berg and Associate Professor Farbenblum recommended the establishment of:

*...a dedicated duty solicitor to assist temporary visa holders and perhaps other vulnerable workers to file and pursue claims, or invest resources to expand the capacity of community legal centres, trade unions and university student legal services to provide individual advice and representation so that migrant workers will be able to effectively participate in the conciliation and court processes set out in the bill.*²⁰⁴

The department advised that education and awareness material would be developed as part of implementation of the Bill, and assured the committee that activities to support any changes would be further explored, including the development of necessary training and education materials.²⁰⁵

²⁰¹ Submission 020, p 8.

²⁰² Submission 023, p 2.

²⁰³ Submission 021, p 1.

²⁰⁴ Dr Laurie Berg, public hearing transcript, Brisbane, 10 August 2020, p 7; see also, submission 021, p 2.

²⁰⁵ DoE, correspondence received 6 August 2020, p 10.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

The Bill includes the following amendments which may give rise to inconsistency in regards to s4(2)(1) of the LSA:

- Clause 4 adds to the definition of stealing in s 391 of the Criminal Code to include failing to pay an employee (or another person on behalf of the employee) an amount payable to the employee (or other person) in relation to the performance of work by the employee.
- Clause 5 amends s 398 of the Criminal Code. Section 398 prescribes a maximum punishment for an offence of stealing of imprisonment for 5 years, unless another punishment is specified. The section then specifies a number of ‘punishments in special cases’. Clause 5 adds to these special cases, dealing with ‘stealing by employers’, under which an offending employer found guilty of stealing the property of an employee is liable to imprisonment for 10 years.
- Clause 6 amends s 408C of the Criminal Code. Section 408C provides for a maximum penalty for an offence of fraud of 5 years imprisonment, or 14 years imprisonment if any of the circumstances set out in subsection (2) apply.
- Clause 6 extends those circumstances, and thus the maximum penalty of 14 years imprisonment, to a situation where the offender is or was an employer of the victim.

4.1.1.1 Proportion and relevance

The creation of new offences and penalties affects the rights and liberties of individuals. The addition of wage theft as a stealing offence and the imposition of higher penalties for wage theft could be seen to impact on the rights and liberties of individual employers that are subject to this offence and penalties.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

*... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*²⁰⁶

Stealing – special cases

The Bill would apply a maximum penalty of 10 years imprisonment for an offence of stealing by an employer from an employee. By way of comparison, the special cases punishments currently listed in s 398 of the Criminal Code include:

- stealing by persons in the public service – 10 years imprisonment
- stealing by clerks and servants – 10 years imprisonment
- stealing by directors or officers of companies – 10 years imprisonment
- stealing by agents – 10 years imprisonment
- stealing property valued at more than \$5,000 – 10 years imprisonment
- stealing by tenants or lodgers (where exceeds \$1,000) – 10 years imprisonment
- stealing after previous conviction – 10 years imprisonment
- stealing of vehicle – 14 years imprisonment
- stealing by looting – 10 years imprisonment
- stealing firearm for use in another indictable offence – 14 years imprisonment
- stealing firearm or ammunition – 10 years imprisonment

Fraud

Clause 6 increases the maximum penalty for an offence of fraud, where the offender is or was an employer of the victim, from 5 years to 14 years imprisonment. By way of comparison, the current circumstances in which the offence attracts a maximum penalty of 14 years imprisonment include where:

- the offender is a director or officer of a corporation, and the victim is the corporation
- the offender is an employee of the victim
- any property the subject of the offence came into the offender's possession subject to a trust, direction or condition that it should be applied for any purpose or be paid to any person specified in the terms of trust, direction or condition
- the property, the yield to the offender, or the detriment caused is at least \$30,000 (but less than \$300,000).²⁰⁷

The explanatory notes offer the following brief justification for the extended offences and penalties:

*Fundamental legislative principles provide that penalties should be proportionate, consistent with other penalties in the legislation and be appropriate to the offence. The increase in the maximum penalties for stealing and fraud offences is warranted in light of the seriousness and prevalence of wage theft as identified by the Committee.*²⁰⁸

²⁰⁶ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

²⁰⁷ Criminal Code, s 408(92).

²⁰⁸ Explanatory notes, p 3.

Committee comment

The committee is of the view that the extended reach of the offence of stealing and the applicable penalties for the offences of stealing and fraud by employers are proportionate and relevant in the circumstances.

4.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

5 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.²⁰⁹

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 [of the *Human Rights Act 2019* (HRA)].²¹⁰

The HRA protects fundamental human rights drawn from international human rights law.²¹¹ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

5.1 Human rights compatibility

In her statement of compatibility on the Bill, The Hon Grace Grace, Minister for Education and Minister for Industrial Relations, identified the following human rights under the HRA as relevant to the Bill:

- the right to recognition and equality before the law (section 15)
- the right to freedom from forced work (section 18)
- property rights (section 24)
- the right to liberty and security of person (section 29)
- the right to a fair hearing (section 31).

The statement of compatibility provides that the right to recognition and equality before the law, right to freedom from forced work, and property rights, are promoted by the Bill.

5.1.1 Right to recognition and equality before the law

Section 15 of the HRA provides the right to recognition and equality before the law.

The statement of compatibility considers the Bill's amendments to civil proceedings for wage recovery, 'promote the rights of workers who are seeking to recover their lawful entitlements', and 'promote the right to recognition and equality before the law by making wage recovery processes more accessible generally'.²¹²

The statement of compatibility notes that migrant workers and other vulnerable cohorts can be disproportionately affected by wage theft, and the Bill's proposed amendments would support these groups in particular, by making wage recovery processes more accessible and strengthening the

²⁰⁹ HRA, s 39.

²¹⁰ HRA, s 8.

²¹¹ The human rights protected by the HRA are set out in ss 15 to 37 of the HRA. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

²¹² Statement of compatibility, p 2.

criminal framework to disincentivise employers from breaching their obligations in regards to payment of their employees.²¹³

5.1.2 Right to freedom from forced work

The right to freedom from forced work is provided by s 18 of the HRA.

The statement of compatibility tabled with the Bill states the right to freedom from forced work is promoted by the Bill, by amending offences and penalties under the Criminal Code to deter employers from stealing their employees' wages.²¹⁴

The statement of compatibility notes amendments by the Bill to facilitate the use of the Industrial Magistrates Court to hear wage recovery matters, 'promotes the right not be arbitrarily deprived of property in the form of wages and entitlements'.²¹⁵

5.1.3 Property rights

Property rights are provided by s 24 of the HRA, which includes that 'a person must not be arbitrarily deprived of the person's property'.²¹⁶

The statement of compatibility tabled with the Bill states that property rights are promoted by the amendments proposed by the Bill. In particular, the amendments to criminalise wage theft 'strengthen the criminal framework that applies when employers breach their obligations' and 'promote the rights of workers not to be arbitrarily deprived of their property'.²¹⁷

The committee notes the right to property set out in s 24 of the HRA may indirectly apply to employees being arbitrarily deprived of contractual rights by non-public entities. The HRA only directly applies to violations of property rights by public entities. It has been observed in respect of the equivalent provision of the *Victorian Charter* that 'Section 20 may also give rise to positive obligations on public authorities to take action to prevent a deprivation of a person's property. Any such obligations are qualified in nature'.²¹⁸

Ensuring respect for property rights through the provision of criminal sanctions, and the provision of civil remedies, against non-public entities could therefore arguably be considered as compliance with such positive obligations.

5.1.4 Right to a fair hearing

Section 31 of the HRA provides the right to a fair hearing. It stipulates that:

*A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.*²¹⁹

The statement of compatibility discusses the application of s 31 of the HRA to the amendments proposed by the Bill. It suggests that the amendments to facilitate the small claims procedure will

²¹³ Statement of compatibility, pp 1-2.

²¹⁴ Statement of compatibility, p 2.

²¹⁵ Statement of compatibility, p 2.

²¹⁶ HRA, s 24(2).

²¹⁷ Statement of compatibility, pp 1-2.

²¹⁸ Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (2nd ed, Thomson Reuters, 2018), 184.

²¹⁹ HRA, s 31(1).

make wage recovery 'faster, simpler and more cost effective, thereby promoting greater access to justice and promoting the right to a fair hearing'.²²⁰

The statement of compatibility notes the Bill's amendments which only allow representation by industrial organisations with leave of the court for a small claims process. It suggests these amendments do not limit the right to equality before the law and the right to a fair hearing, as overall the Bill 'has the effect of broadening a worker's entitlements to representation under the FW Act'.²²¹

The restriction of entitlements to representation in civil proceedings through the requirement of leave might be considered to raise issues addressed in s 31 of the HRA. Given the reasonableness of such restrictions, however, and the countervailing benefits of such leave requirements, it is not considered that such requirements violate the rights set out in s 31.

5.1.5 Right to liberty and security of person - clauses 4, 5, 6, 11 and 12

Section 29 of the HRA provides for the right to liberty and security of person.

The statement of compatibility acknowledges that the right to liberty and security of person will be limited by the amendments to the Criminal Code.²²²

The creation of new criminal offences and associated penalties raises potential issues under s 29 of the HRA - right to liberty and security of person - in respect of natural persons who may be accused of committing such offences in the future.

The prospective application (required by s 35 of the HRA) of the Bill's clearly drafted criminal laws directed at theft of property, with appropriate protection of the due process rights set out in s 31 of the HRA, would not constitute a violation of the rights set out in s 29 of the Act.

This conclusion is supported, for example, by academic commentary on the equivalent provisions of the *Victorian Charter*.²²³ The same conclusion is also supported by the terms of s 18 of the HRA - freedom from forced work - which, for example, expressly excludes from the definition of 'forced or compulsory labour' work or service that is 'normally required of a person who is under detention because of a lawful court order'.

International human rights instruments also clearly permit the detention of persons following the commission of crimes without requiring resort to limitation clauses in respect of such detention. For example, the *European Convention on Human Rights* expressly provides in Article 5 that, '... No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court ...'.

Section 29(8) of the HRA provides that 'A person must not be imprisoned only because of the person's inability to perform a contractual obligation'. The inclusion of the word 'only' and the requirement that the theft under the proposed amendments require a criminal intent appears to avoid the violation of the right set out in s 29(8). The Minister's introduction of the Bill stated, 'Like other property offences, the amendments do not introduce a concept of "recklessness". It is not intended that the amendments will capture employers who act honestly'.²²⁴

Were this not the case, it is arguable that an issue under s 29(8) might arise, however, if s 13 of the HRA were to apply, in respect of a law that criminalises the theft of wages where the law is non-

²²⁰ Statement of compatibility, p 2.

²²¹ Statement of compatibility, p 3.

²²² Statement of compatibility, p 3.

²²³ See, for example, Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (2nd ed, Thomson Reuters, 2018), [CHR.21.100].

²²⁴ Queensland Parliament, *Record of Proceedings*, 15 July 2020, p 1629.

retrospective and is procedurally fair, then there would be little difficulty in defending the law under s 13.

Criminalisation of theft of contractual entitlements is rationally related to ensuring respect for the right to property and deprivations of liberty in relation to intentional theft appears proportionate, and given the reported prevalence of such theft, there does not appear to be a less restrictive way to achieve the purpose that is reasonably available.

Committee comment

The committee finds the Bill is compatible with human rights.

The committee notes the Bill limits the human right regarding the right to liberty and security of person in clauses 4, 5, 6, 11 and 12, however, considers that this right is limited only to the extent that it is reasonable and justifiable.

5.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Justin Cobbett
002	Connect Group
003	Confidential
004	Australian Small Business and Family Enterprise Ombudsman
005	National Retail Association Limited
006	Restaurant and Catering Australia
007	Master Builders Queensland
008	Maurice Blackburn Lawyers
009	Young Workers Hub
010	Queensland Trucking Association
011	Master Electricians Australia
012	Housing Industry Association
013	Local Government Association of Queensland
014	Australasian Meat Industry Employees' Union
015	Salvation Army
016	Queensland Nurses and Midwives' Union
017	Afshun Zareey
018	Queensland Council of Unions
019	Australian Workers' Union Queensland Branch
020	United Workers Union
021	Associate Professor Dr Laurie Berg and Associate Professor Bassina Farbenblum
022	The Australian Industry Group
023	Queensland Law Society
024	Legal Aid Queensland
025	Bulimba Electorate Youth Advisory Panel

026 Chamber of Commerce and Industry Queensland

027 Franchise Redress

Appendix B – Officials at public departmental briefing

Department of Education, Office of Industrial relations

- Mr Tony James A/Assistant Director-General
- Mr Rhett Moxham, A/Director, Industrial Relations Strategic Policy

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General
- Ms Julie Rylko, Director, Strategic Policy and Legal Services

Appendix C – Witnesses at public hearing

United Workers Union

- Ms Jo Briskey, Queensland Political Coordinator
- Mr Adriaan Burgess, Union Member
- Ms Tara Small, Union Member

Young Workers Hub (YWH)

- Ms Hannah Herrmann, Outreach Organiser
- Ms Imogen Marker, Co-founder
- Mr Declan Langlands, Young Worker
- Ms Mele Tulimaiau, Young Worker

Private capacity

- Dr Laurie Berg

Queensland Council of Unions

- Mr Michael Clifford, General Secretary
- Ms Jacqueline King, Assistant General Secretary
- Mr Warren Earle, Organiser, Australasian Meat Industry Employees Union
- Mr Samuel McGrath, Boilermaker
- Ms Noelene Rudland, Industrial Officer, National Tertiary Education Union

Australian Industry Group

- Mr Stephen Smith, Head of National Workplace Relations Policy

Chamber of Commerce & Industry Queensland

- Ms Luisa Baucia, Policy Advisor
- Mr Rob Hall-Boman, Manager, Employer Assistance and HR Services

Legal Aid Queensland

- Ms Loretta Kreet, Principal Lawyer and Consumer Advocate, Civil Justice Services
- Mr Tinashe Makamure, Employment and Consumer Protection Lawyer, Civil Justice Services

Queensland Law Society

- Mr Luke Murphy, President
- Ms Ellie Bassingthwaighe, QLD Industrial Law Committee Member
- Ms Kate Brodnik, Senior Policy Solicitor

Local Government Association of Queensland

- Mr Tony Goode, Workforce Strategy Executive

Connect Group

- Mr Michael Fryszler, Managing Director

Statement of Reservation

Statement of reservation

The LNP believe that workers deserve to get paid for the work they do. No-one wants to see any workers being ripped off. This has never been more important given that a record number of Queenslanders are on the jobless queue and at 8.8% Queensland has the worst unemployment rate in the nation.

As was highlighted in the Parliamentary Committee Inquiry on the issue of wage theft, the Palaszczuk Labor Government has attempted to use this issue to undermine the federal industrial relations system. As we said in the Committee report - the LNP attempted to include workers and contractors under direct control of the Queensland Government. The Palaszczuk Government voted down sensible amendments that would have compelled the inquiry to investigate Labor's on-going health payroll debacle, as well as the underpayment of security guards and other contractors at the Commonwealth Games and the use of contractors in the public service – an issue that has been consistently raised by the Together Union.

It should be remembered that the Bligh Labor Government referred significant elements of our private sector industrial relations jurisdiction to the Commonwealth in 2009, a move the LNP opposed at the time. That was a Bill that was moved by the current Treasurer Cameron Dick and supported by the Premier Anastacia Palaszczuk and the Minister for Industrial Relations Grace Grace.

In that debate, the current Minister for Industrial Relations said:

“The national industrial relations system will provide Queensland employees with continuing decent wages and employment conditions. Workers have nothing to fear. The ability of Fair Work Australia to issue remedial take-home pay orders will ensure no employee suffers a loss of wages when moving to a modern award.

“In conclusion, this bill strikes, in my view, the balance in establishing a national IR system but respects state rights at the same time. It is in the best interests of workers and business.”


In relation to this Bill, there are a range of criticisms from business groups, unions and legal stakeholders.

Stakeholders raised concerns about the constitutionality of the new laws, the impact on complex award conditions on small businesses and the current state of the economy, whether conciliation needs to be compulsory as a low cost option for mediating disputes between employers and workers and the duplication with provisions under the Fair Work Act and Fair Work Ombudsman. Other stakeholders also opposed the introduction of criminal sanctions for a civil matter.

We note the comments from the Department that “the Queensland Government is confident about the validity of the provisions having regard to existing Commonwealth laws. If the Commonwealth introduces wage theft criminal laws, that will be a matter for the

Queensland Government to consider at that time, having regard to the specific nature of the reforms and drafting of relevant provisions.” To provide certainty to businesses and workers, the Minister should advise whether Crown Law advice has been obtained in relation to the constitutional validity of these laws and if so, the advice should be publicly released.

The LNP is the only party that will build a stronger economy and get Queensland working again.



Jim McDonald MP
Member for Lockyer



Simone Wilson MP
Member for Pumicestone