National Retail Association

In the Education, Employment and Small Business Committee, Queensland

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

July 2020

National Retail Association

1. About the National Retail Association

1.1. The National Retail Association Limited, Union of Employers (**NRA**) is an industrial association registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) and this *Industrial Relations Act* 2016 (Qld) to represent the industrial interests of employers in the retail, fast food, quick service and affiliated industries.

1.2. The NRA is the voice of modern retail, representing a substantial network of approximately 6,000 traditional, multi-channel and digital retailers across over 28,000 shop fronts, from small "mum-and-dad" businesses to major international corporate groups.

1.3. As an industrial association, the NRA has been a voice for its members since approximately 1921, and has grown and developed alongside the retail and quick service industries bringing with it the voice of almost 100 years' solidarity with these industries.

2. About these submissions

2.1. These submissions are made to the Education, Employment and Small Business Committee (**the Committee**) with respect to the proposed *Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020* (Qld) (**the Bill**) introduced to Parliament by the Minister for Industrial Relations on 15 July 2020.

2.2. The NRA is uniquely placed to comment on both the technical and practical aspects of the Bill as proposed, having made submissions in given evidence in inquiries on the subject of "wage theft" not only in Queensland, but also in Victoria, South Australia, Western Australia and federally.

2.3. In broad terms, the Bill proposes to implement certain recommendations of the Committee arising out of the Inquiry into Wage Theft in Queensland as reported in *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 Report**) tabled in Parliament on 16 November 2018, specifically Recommendation 8 and Recommendation 15.

2.4. It is these recommendations to which the Bill seeks to give effect by:

(a) amending the *Criminal Code* to make the underpayment or non-payment of wages to employees by employers a criminal offence;

(b) amending the *Industrial Relations Act 2016* (Qld) to provide for the conciliation of civil penalty matters and unpaid wage matters in proceedings before the Industrial Magistrates Court;

(c) making consequential amendments to the *Magistrates Courts Act 1921* (Qld) and the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

2.5. The NRA's primary concerns with the Bill are:

(a) that attempts to criminalise, at a State level, conduct which is subject only to civil sanction under Federal law may be unconstitutional and invalid;

(b) that the legislation fragments the national industrial relations framework;

(c) that criminalising conduct where there are areas of uncertainty and doubt has the possibility to enliven unintended consequences;

(d) that the legislation is not needed or, if it is, would not necessarily achieve its objective;

(e) that referral of claims to conciliation is currently discretionary;

(f) that conciliation may, on present terms, be conducted by persons unqualified to examine industrial relations matters;

(g) that defendants may be denied access to legal representation in proceedings where they may be liable to a penalty;

(h) notwithstanding the above, any person may be represented as of right by an unqualified and unregulated "agent";

(i) changes to the *Magistrates Courts Act 1921* (Qld) may tend to create confusion as to the jurisdiction of specific courts.

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Part 1: Criminal offences

3. The constitutional concern

3.1. The Bill is not the first attempt by a State government to legislative criminal penalties for "wage theft"; Victoria was the first to do so with the *Wage Theft Act 2020* (Vic) passed in June 2020.

3.2. This Act was described as "risk(ing) significant duplication of resources, confusion, potential unenforceability and ultimately, waste of public money" by Commonwealth Attorney-General and Minister for Industrial Relations, the Hon. Christian Porter MP. Section 5 of the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Qld) referred, among other matters, the "compliance and enforcement" of the *Fair Work Act 2009* (Cth) (**FW Act**) to the Parliament of the Commonwealth.

3.3. We note that, relevantly, paragraph 5(1)(b) referred this matter "only to the extent of making laws with respect to any such matter by making express amendments of the Commonwealth Fair Work Act", meaning that the Parliament of Queensland retained the power to make laws with respect to the referred subject matters by amending other legislation.

3.4. Whilst this means that the Parliament of Queensland retains the power to make laws pertaining to the "compliance and enforcement" of the FW Act, it does not address the constitutional issue of inconsistency with the Federal legislation.

3.5. Section 109 of the *Commonwealth of Australia Constitution Act 1901* (**the Constitution**) provides that:

> *When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, the extent of the inconsistency, be invalid.*

3.6. It is a long-established that where a State law and a Commonwealth law deal with the same subject matter in an identical fashion, but prescribe different penalties, procedures, investigative powers, remedies or forums in which disputes or prosecutions are advanced, the Commonwealth law will prevail to the exclusion of the State law.

> In *Hume v Palmer* (1926) 38 CLR 441 both Commonwealth and NSW laws prescribed an identical rule with respect to the right of way afforded to steam vessels crossing paths. The Commonwealth and NSW laws differed only in relation to the penalties, procedure, and the forum for determining penalties.
>
> The High Court held by a 6 – 1 majority that the Commonwealth law had "covered the field" to the exclusion of the NSW law.

> The case of *Viskauskas v Niland* (1983) 153 CLR 280 dealt with the interaction of racial anti-discrimination laws under the *Racial Discrimination Act 1975* (Cth) and the *Anti-Discrimination Act 1977* (NSW).
>
> The High Court held that there was an inconsistency between the Commonwealth law and the State law, noting *inter alia* that under the Commonwealth law the power to make orders was vested in a court, and those orders for an uncapped amount of damages, whereas under the NSW law the power to make orders was vested in a tribunal and the extent of damages was capped.
>
> The High Court subsequently held that the Commonwealth law had "covered the field" to the exclusion of the NSW law.[1]

3.7. It has been noted that one of the key elements in order to establish whether Commonwealth and State laws are inconsistent is whether the Commonwealth law clearly intends to "cover the field" of the relevant subject matter to the exclusion of State laws.[2]

3.8. Section 26(1) of the FW Act provides that:

[1] Note that the *Racial Discrimination Act 1975* (Cth) was subsequently amended to allow for the concurrent operation of State and Commonwealth laws.
[2] PH Lane (1986) *Lane's Commentary on the Australian Constitution*, Sydney, Law Book Co at pp. 586 - 587

This Act is intended to apply to the exclusion of all State or Territory industrial laws so far as they would otherwise apply in relation to a national system employee or a national system employer.

3.9. With this declaration of intent in mind, 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.

3.10. 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. In this sense, the practical effect of passing the Bill into law would be minimal insofar as it pertains to those subjects already regulated by the FW Act.

4. The NRA's position regarding criminalisation generally

4.1. While the NRA does not support legislation which fragments, and introduces uncertainty to, the otherwise nationally-consistent industrial relations framework, at all times, NRA has advocated for the lawful operation of business to ensure competitive fairness and, in broader terms, a fair go all round.

4.2. Deliberate wage non-compliance can have a significant effect on competition in the marketplace, as it allows one business to under-cut its competitors. To eliminate illegitimate competitive advantage in these circumstances, the NRA has offered conditional support for criminalization in certain circumstances.

4.3. The NRA has, in its submissions to inquiries into the subject of "wage theft" in Victoria, South Australia and Western Australia and to consultations in relation to prospective legislation in Victoria and federally, maintained the position that "wage theft" should only be criminalized in circumstances where:

(j) the conduct arises out of a systematic pattern of conduct by the employer; and

(k) the employer knowingly and deliberately engaged in that systematic pattern of conduct; and

(l) the pattern of conduct engaged in by the employer was attended by:

(i) dishonesty; or

(ii) the unconscionable exploitation of a particular vulnerability possessed by the employee or class of employees affected.[3]

4.4. While the NRA may support legislation which meets all of the above criteria, the NRA cannot do so at any level of government other than the federal level in order to ensure a nationally-consistent approach and certainty with respect to the enforceability of the relevant legislation.

4.5. The NRA agrees that the *mens rea* of "intent', as required by the offence of *stealing* as defined in subsection 391(1) of the *Criminal Code*, is the appropriate standard of deliberateness for any criminal sanction of "wage theft".

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5. Whether criminal offence provisions are necessary to achieve objective

5.1. The NRA notes that the offence of fraud in subsection 408C(1) of the *Criminal Code* is not, in and of itself, proposed to be altered by the Bill.

5.2. Rather, section 6 of the Bill proposes to insert a circumstance of aggravation to subsection 408C(2) relevant to the determination of penalty.

5.3. This would indicate that the offence of fraud, as it currently exists in subsection 408C(1), already captures the circumstance of an employer dishonestly failing to make proper payments to their employees.

5.4. This raises several issues that ought properly be considered before the Bill is enacted:

[3] National Retail Association (2019) Submission to the industrial relations consultation, *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*, Spring Hill, NRA at 8.1.1

(a) if the offence of fraud is already sufficient to capture the conduct contemplated for criminalisation by the Bill, are sections 4 and 5 of the Bill (pertaining to stealing) necessary to achieve the outcome specified in Recommendation 15 of the Report; and

(b) conversely, if the offence of fraud as it currently exists in subsection 408C(1) of the *Criminal Code* is *not* sufficient to capture incidents of "wage theft", then the Bill in its current form does not alter this situation, and would therefore be ineffective as a means of implementing Recommendation 15 of the Report.

5.5. If, upon closer examination, the offence of fraud as it is currently defined in subsection 408C(1) of the *Criminal Code* is in fact sufficient to capture incidents of employers dishonestly failing to make proper payments to their employees, it would appear to follow that the lack of criminal prosecutions under existing law is not a matter an insufficiency of law, but:

(a) a lack of resources in relevant enforcement agencies to prosecute such matters;

(b) a lack of will in the relevant enforcement agencies to prosecute such matters; or

(c) an unwillingness on the part of the relevant enforcement agencies to engage in the constitutional issue of pursuing criminal sanctions for such conduct (discussed further below).

6. Potential for unintended consequences

6.1. The idea of criminalising "wage theft" is predicated on the notion that it is categorically certain, at any particular point in time, to independently determine what an employee is properly entitled to be paid.

6.2. Whilst it is sometimes obvious – for example, an employee not being paid any penalty rate for weekend work – there are a number of complexities of Australia's modern award system which are difficult for most individuals to comprehend regardless of their skill and familiarity with these instruments.

6.3. For example, using the *General Retail Industry Award 2010* as an example, since 1 July 2013 there have been more than 13,822 rates of pay payable to employees engaged under that award depending on their employment status (permanent or casual), their age, their classification and the times at which the work is performed.

6.4. This figure of 13,822 does not include rates of pay for shiftworkers, baking production employees, apprentices, or any employee engaged under the National Training Wage or who are paid a supported wage because of a disability. If these were included, the figure of 13,822 could easily double.

6.5. Under the modern award system, the pay to which an employee is entitled depends on their classification, and while in some modern awards this is relatively straightforward (such as being qualification-based), in others it is less clear-cut and open to dispute.

6.6. A further example can be seen under the *General Retail Industry Award 2010,* where the typical duties of a Retail Employee Level 1 are quite extensively set out. However, the duties of the next pay rank – Retail Employee Level 2 – are simply described as being "at a higher level than Retail Employee Level 1," with no further elaboration.

6.7. In the life of the modern award system, it has never been determined by a court at what point an employee "switches" from being entitled to pay as a Retail Employee Level 1 to a Retail Employee Level 2. As a practical matter, this is something any enforcement agency will need to reach a conclusion on with a high degree of certainty before any prosecution can even be contemplated.

6.8. This highlights existing areas of legal uncertainty where it is only by the outcome of a court case that the employer and the employee will have any certainty as to their rights and obligations, which is likely to impede the effectiveness or just commencement of criminal prosecution.

6.9. There are also areas of mathematical uncertainty; the NRA notes that 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.

6.10. This is because payroll systems are often updated following the announcement of the percentage change to the minimum wage each year. As penalty rates and loadings are themselves expressed as percentages, this results in these systems reaching slightly different results (varying by $0.01 - $0.03 per hour) when calculating these higher rates of pay.

6.11. These differences arise because different systems may round to the nearest cent at each stage of the calculation process, or may only round to the nearest cent at the conclusion of the calculation process, as demonstrated below using the increase awarded in the *Annual Wage Review 2017-18*:

Retail Employee Level 1 as at 1 July 2018			=	$789.90 per week		
Hourly rate	=	$20.7868		Hourly rate	=	$20.79
Sunday	=	$37.42		Sunday	=	$37.42
Public Holiday	=	$46.77		Public Holiday	=	$46.78

6.12. As can be seen from the above, where the hourly rate was rounded to the nearest cent at the first instance, it produced a higher public holiday rate of pay than would be payable if rounding to the nearest cent only occurs once the penalty rate had been applied.

6.13. As there is no legislative provision that specifies the process by which penalty rates and loadings are to be calculated, either approach is equally valid at law.

6.14. Whilst the difference in the above example is only $0.01 per hour, when this is compounded across multiple hours, multiple employees, and multiple days, the total difference may not be inconsequential.

6.15. The offence of stealing, as proposed to be amended by the Bill, is not a question of degree – either the employer has paid to the employee what they are properly owed, or they have not. As such, the relevant enforcement agency will first of all need to determine what the "correct" rate of pay actually is, in circumstances where this is not in fact prescribed and may differ depending on calculation methodology.

6.16. This issue is exacerbated when it is borne in mind that, given the paucity of claims for wages and entitlements by national system employees through the State courts, with the greatest respect to the State's judiciary there is likely a dearth of familiarity with the specifics of the federal industrial relations system, complicating the enforcement process further.

6.17. While it is possible that such a situation will not fall within the relevant "intents" described at subsection 391(2) of the *Criminal Code*, this will depend on whether the "intent to not pay" an amount because it is not calculated as owing is commensurate with the "intent to permanently deprive" as described at paragraph 391(2)(a).

6.18. The NRA therefore recommends, if only for the avoidance of doubt, that the Bill be amended to ensure that either:

(a) a mere difference in mathematical methodology does not amount to "intent" or "dishonesty"; and/or

(b) it be a full defence to any prosecution if the defendant can show that the only reason that any underpayment arose was because of the application of a reasonable calculation methodology.

Part 2: Amendments to the *Industrial Relations Act 2016* (Qld)

7. Conciliation of "fair work claims" – discretion to refer

7.1. The NRA agrees that it is appropriate to provide for conciliation of claims for entitlements arising under the *Fair Work Act 2009* (Cth) (**FW Act**) in proceedings for an order under section 545(3) of that Act.

7.2. The inclusion of such a process reflects the process applicable to such claims in the Federal Circuit Court and the Federal Court.

7.3. The NRA notes, however, that in the Federal Court and the Federal Circuit Court the referral of a matter to a conciliation or mediation is wholly at the discretion of the court. Section 507C of the IR Act, as proposed to be inserted by the Bill, is unclear as to whether such a referral is discretionary, in that:

(a) subsection 507C(2) provides that the registrar "may" refer the matter for conciliation, indicating that this is a wholly discretionary power;

(b) however, paragraphs 507C(3)(a) and (b) state that the referral "must" be done within a particular time period, which tends towards a conclusion that the power is not discretionary; and

(c) subsection 507C(4) applies only "if" the proceeding is referred for conciliation, indicating that the power is again discretionary.

7.4. On balance, it would appear that the power to refer "fair work claims" for conciliation is discretionary rather than mandatory. This may be clarified by making the following amendment to the proposed subsection 507C(3):

> *(3) If a fair work claim is referred for conciliation under subsection (2), such referral:*
>
> *(a) must be done as soon as practicable after the proceeding for claim is started;*
>
> *(b) must be done before the Industrial Magistrates Court hears the claim; and*
>
> *(c) should preferably be done before a party to the claim files a defence to the claim.*

8. Conciliation of "fair work claims" – identity of conciliators

8.1. The NRA also notes that while the proposed section 507D provides that all commissioners are conciliators for fair work claims, there is no particular provision proposed in section 9 of the Bill which provides that the registrar of the Industrial Magistrates Court must, when referring a fair work claim for conciliation, refer it to the Queensland Industrial Relations Commission (**QIRC**).

8.2. The proposed section 507D is not expressed in such a way as to vest commissioners with the exclusive ability to conciliate fair work claims, and as such it is open for a fair work claim to be referred to any person for conciliation.

8.3. The NRA objects to the notion that matters of industrial relations can be referred to any individual. The Australian industrial relations system is acknowledged as one of the most complex in the world, and presuming that any individual may simply "pick up" a case and understand the technicalities of the rights and obligations being asserted by each party is highly optimistic.

8.4. Instead, the NRA submits that it is appropriate for these matters to be referred to a commissioner of the QIRC for conciliation, as these individuals are not only learned in the issues that arise in industrial relations matters, but also typically before their appointment dealt with many of the same issues arising in such cases on a regular basis.

8.5. As such, the proposed section 507C(2) ought to be amended as follows:

> *(2) The registrar may refer the fair work claim to conciliation by the commission.*

9. Legal representation – lawyers removed from penalty claims

9.1. Section 12 of the Bill proposes to make several amendments to section 530 of the IR Act, which deal with access to legal representation in proceedings before the QIRC and the Industrial Magistrates Court.

9.2. At present, paragraph 530(1)(e)(ii) permits a party to proceedings to be represented by a lawyer in proceedings before the Industrial Magistrates Court as a matter of right, if the proceedings have been brought personally by an employee and could have been brought before another court (such as the Federal Circuit Court).

9.3. Section 12 of the Bill proposes to include an additional requirement to this, in that the Industrial Magistrates Court must also give leave for the person to be legally represented.

9.4. The NRA understands that this is an attempt to replicate the provisions of subsection 548(5) of the FW Act, which pertains to the small claims procedure under that Act. Under that subsection, a party to a small claim may only be represented by a lawyer with the leave of the court.

9.5. However, under the small claims procedure in section 548 of the FW Act, the court is not permitted to make an order imposing pecuniary penalties.

9.6. It is important to note that paragraph 530(e)(ii) of the IR Act, both in its current form and as is proposed to be amended, is not limited to fair work small claims, but includes proceedings seeking the imposition of penalties.

9.7. As such, subsection 12(1) of the Bill in its present form removes the absolute right for a party who may be subject to the imposition of a penalty to access legal representation.

9.8. 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.

9.9. The NRA further notes that as section 549 of the FW Act provides that the contravention of a civil remedy provision is not an offence, the concern of the NRA in this respect is not ameliorated by paragraph 530(1)(e)(iii) of the IR Act.

9.10. The NRA urges the Committee to recommend that subsection 12(1) of the Bill be replaced entirely with the following:

(1) Section 530(1)(e)(ii) –

omit, insert –

(ii) <u>the proceedings are for other than a fair work small claim –</u> the proceedings relate to a matter that could have been brought before a court of competent jurisdiction other than an Industrial Magistrates Court; or

(1A) Section 530(1)(e) –

Insert –

(iv) the proceedings are for a fair work small claim – an Industrial Magistrates Court gives leave.

9.11. The above amendments would allow persons the unfettered right to legal representation in proceedings in which they may be liable to the imposition of a penalty, whilst maintaining the limitation on legal representation in small claims to allow those matters to be advanced with a minimum of legal technicality.

10. Representation by agents remains unfettered and unregulated

10.1. The NRA notes with some consternation that, although the Bill proposes to further limit the role of lawyers in proceedings under the IR Act, the role of "agents" remains wholly unfettered and unregulated.

10.2. Pursuant to paragraph 529(1)(a) of the IR Act, a party to proceedings may be represented by an agent appointed in writing (as distinct from a lawyer) as of right.

10.3. Persons and entities that act as agents in proceedings before the QIRC and the Industrial Magistrates Court are substantially unregulated, with no professional or ethical obligations imposed upon them by any law or rule of court.

10.4. This is distinct from lawyers, who are subject to extensive oversight by the courts, stringent ethical obligations, and disciplinary action by a dedicated regulatory body.

10.5. The NRA also notes that industrial courts in other jurisdictions have expressed concern about the use of "industrial agents" and the lack of regulation attaching to those who act in that capacity.

10.6. In 2019, Chief Commissioner Scott of the Western Australian Industrial Relations Commission made the following comments in the context of that jurisdiction's system of "registered industrial agents":

> *I record my concern that industrial agents receive the benefit of registration under the Act. This gives them some level of credibility in the eyes of those who seek to be advised and represented on important matters relating to their employment, their businesses and their livelihoods. Those who need this service are often not qualified to judge the standard of service they are getting. The legislation provides those people with no real protection. Although there is a code of conduct to which the agent must bind themself, and the agent is required to hold indemnity insurance, the legislation provides no scheme for the supervision of agents once they are registered or to deal with any whose registration ought to be subject to scrutiny and possibly cancelled. They are free to charge fees yet are not accountable. They may be incompetent, unethical or not apply appropriate diligence and yet they may hang out their shingle. Because the industrial agent is*

registered under the Act, any person seeking advice or representation would be entitled to assume that such registration brings an indication of the quality of the service. It does not.[4]

10.7. The NRA notes that there is a growing industry of such "agents" both in Queensland and more broadly throughout Australia. Of the Australian jurisdictions, only Western Australia engages in any form of regulation of these agents, and as the observations of the Chief Commissioner above show, this regulation is far from perfect.

10.8. The NRA urges the Committee to recommend that the Bill be amended, or that further legislation be introduced, to provide for the regulation of persons who carry on a business as "agents" pursuant to paragraph 529(1)(a) of the IR Act, including but not limited to:

(a) requiring such businesses to be registered with the registrar or other appropriate body;

(b) requiring such businesses to comply with a code of conduct in their dealings with clients and in the conduct of proceedings before the QIRC or the Industrial Magistrates Court;

(c) subjecting such businesses to regulatory oversight, including investigation and disciplinary action for contravention of the code of conduct.

Part 3: Amendments to the *Magistrates Courts Act 1921* (Qld)

11. Amendment of "employment claim"

11.1. Section 18 of the Bill proposes to amend section 42B of the *Magistrates Court Act 1921* (Qld) to remove a claim under section 539 of the FW Act from the scope of the expression "employment claim".

11.2. The NRA notes that, in the absence of this amendment, employees are able to advance claims under section 539 of the FW Act through the Magistrates Courts following the process specified in Part 5A of the *Magistrates Courts Act 1921* (Qld).

11.3. As Part 5A of the *Magistrates Courts Act 1921* (Qld) already provides for conciliation of claims arising under the FW Act, the NRA questions whether it might be more effective and efficient to amend Part 5A of the *Magistrates Courts Act 1921* (Qld) with respect to matters of procedure and evidence rather than amending the IR Act to include more significant provisions with respect to conciliation.

11.4. In its current form, the Bill proposes to remove claims under section 539 of the FW Act from the ambit of "employment claims", meaning that part 5A of the *Magistrates Courts Act 1921* (Qld) would be effectively limited in its application to claims for breach of contract by employees earning *less than* the FW Act's high-income threshold.

Part 4: Amendments to the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

12. Amendment of "minor civil dispute"

12.1. Section 21 of the Bill proposes to amend the dictionary contained in Schedule 3 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (**QCAT Act**) to exclude claims under section 539 of the FW Act from the scope of the term "minor civil dispute".

12.2. The NRA notes that the Queensland Civil and Administrative Tribunal (**QCAT**) is not an "eligible State or Territory court" for the purposes of section 12 of the FW Act, and therefore does not have jurisdiction to determine claims under that provision in any event.[5]

12.3. Despite QCAT having ascertained its lack of jurisdiction nearly seven years ago, the tribunal continues to be subject to applications for claims under the FW Act requiring separate determination by reference to case law each time.

[4] *Maher v The Trustee for the Croker Unit Trust* [2019] WAIRC 00245 (27 May 2019) at paragraph 21. See also *Maher v The Trustee for the Croker Unit Trust* [2019] FWC 6447 (20 September 2019) at [5] to [17] (inclusive) for the comments of Commissioner Beaumont of the Fair Work Commission in relation to the further conduct of the same agents.

[5] *Erin v Smipat Pty Ltd t/as J Hooker Burleigh Heads* [2013] QCATA 153

12.4. As such, while the proposed amendment does not alter the legal situation, it does provide a degree of legislative clarity allowing these matters to be disposed of more readily and thereby with lesser impost on the public purse.

12.5. The NRA therefore supports this amendment.

The NRA is happy to discuss these matters or any other matter arising out of the Bill with the Committee at the Committee's convenience.

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