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Committee Secretary

Education, Employment and Small Business Committee
Parliament House
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Brisbane Qld 4000

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

Introduction

The Queensland Trucking Association (QTA) makes this submission in response to proposed Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 (here after referred to as the *Wage Theft Bill*).

The QTA supports QLD operators in their efforts to act lawfully in their workplace practices. They do not support any efforts by operators to deliberately act unlawfully including wilful underpayment of wages and other entitlements. It is the Association's experience that most operators act in good faith to ensure they meet or exceed their legal obligations and pay employees correctly.

It is the view of the QTA that:

- 1) The proposed Bill should be abandoned.
- 2) The proposed Wage Theft Bill would operate unfairly for Queensland businesses and fails to suitably address genuine unintentional errors.
- 3) The characterisation of underpayments as 'stealing' is inappropriate. This is especially the case where there has been an unintentional failure to pay the 'amount' payable.
- 4) An existing federal regulatory system is already in place through the Fair Work Ombudsman that provides an appropriate framework for addressing underpayments of employees' remuneration and applies appropriate sanctions for employers who deliberately underpay employees.
- 5) Actions taken to improve that system, principally the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, has only been in place for around 3 years and insufficient time has passed to assess the effectiveness of that Act.
- 6) Should that Act be assessed at this time, its success should be measured against substantial increases in the number of self-reported underpayments made to the Fair Work Ombudsman in the last 2 years.
- 7) Introduction of a Wage Theft Bill should be reconsidered against the outcome of the Attorney General's IR Roundtable discussions due to end later this year, specifically the roundtable reviewing Compliance with the Fair Work Act.

- 8) Introduction of a state-based system to address a federal system is likely to increase confusion for employers and employees when seeking to address underpayment concern and add complexity in their resolution.
- 9) A state-based system could not hold powers to interpret Modern Awards and the Fair Work Act 2009. In absence of any such powers, any system would be incapable of resolving any disputes, and subsequent claims of underpayment, where interpretation was central to the dispute.
- 10) The introduction of criminal penalties for wage underpayments would act counter to the goals of the Wage Theft Bill. Of particular concern, is that exposing directors and managers of businesses to criminal penalties would prevent the self-disclosure of underpayments to the FWO, a process that has experienced significant success in the past two years.
- 11) If the Wage Theft Bill proceeds, we seek an Amnesty period for operators to self-disclose underpayments, as recently undertaken with the Superannuation guarantee amnesty.

Who are we

The Queensland Trucking Association Ltd (QTA Ltd) is the peak industry body for road freight operators in Queensland.

We represent operators of all sizes, from all sectors and regions, suppliers, manufacturers and stakeholders who make up an industry that is a major contributor to the economy. Our purpose is to ensure that regulation is reflective of contemporary industry practices in all areas that impact the safety, productivity, efficiency and viability of the road freight industry.

The Fair Work Act and existing federal regulatory system

The Fair Work Act provides a national workplace relations system for Constitutional Corporations and is the principal workplace relations legislation governing Australian workplaces, including Queensland workplaces.

Within the Fair Work Act, employees are protected from wage theft and are granted rights to the recovery of remuneration owed to them for work performed. Similarly, Employers who fail to pay their workers for work performed face large civil penalties. Following the introduction of the Fair Work (Protecting Vulnerable Workers) Act 2017 (Cth) (Protecting Vulnerable Workers Amendments) 'serious contravention' of a workplace law faces maximum penalties of \$630,000 for a corporation

Given that the Protecting Vulnerable Workers Amendments have only been in place for around three years, there is insufficient evidence at this time to conclude that the amendments have been ineffective in addressing the underpayment of wages. However, it is otherwise recognised that in the last 2 years, there has been a steady increase in self-reported underpayments made to the Fair Work Ombudsman, resulting in the planned recovery of millions of dollars. The FWO's 2018-19 annual report suggests that 'compliance and enforcement activities are creating the desired effect'.

Many underpayments are the result of genuine misunderstandings and payroll errors when interpreting complex interacting Industrial Instruments such as the Modern Awards and Enterprise Agreements. In one of the largest incidences where underpayments were found and self-reported by a very large national employer with sophisticated IR and HR practices, those underpayments were a result of the misinterpretation of the legal entitlements of employees at a certain level of seniority carried over several years (*Woolworths Group Limited*).

The proposal to criminalise underpayments as 'stealing'

The treatment of underpayments of wages and entitlements as a criminal offence would not meet the objective of the Fair Work Act to provide a 'balanced framework for cooperative and productive workplace relations'

QTA strongly opposes the introduction of criminal penalties for wage underpayments.

The Queensland Government's proposed approach would operate very unfairly for employers given the complexity of Australia's workplace relations system that is often the cause of the underpayments. Exposing directors and managers to potential imprisonment if they are found to engage in 'stealing' in these instances would be harsh and inappropriate should the intended outcome be improved compliance.

This is particularly the case where they are not protected from imprisonment should they self-disclose and make payments to rectify any identified unpaid or underpaid amounts. Instead, any acts to criminalise underpayments, without recognising whether those underpayments are the result of a genuine misunderstanding or miscalculation of amounts owed to the worker, would deter self-disclosure and lead to lower rates of cooperation and less productive workplace relations between regulators and employers.

If the Queensland Parliament decides to introduce criminal penalties for wage underpayments or non-payments, the penalties should only apply to dishonest and deliberate conduct. Additionally, an amnesty period should apply for historical underpayments whereby businesses can make self-disclosure free from the fear of criminal and civil prosecution.

The state's ability to determine national system wage-related disputes

A barrier faced by Australian employers to ensuring employees receive their legal entitlements is the provision of clear timely written advice surrounding the interpretation of Industrial Instruments as they relate to their business. It is the responsibility of the Fair Work Ombudsman to provide interpretation advice, and it is their regular conduct to not provide advice in writing. It is further the experience of the QTA that advice can be inconsistent and subject to lengthy delay. Any inconsistencies in interpretation can lead to the underpayment of wages.

Should a QLD based industrial body also take on the responsibility of interpreting the industrial instruments, this would only lead to further uncertainty and inconsistencies, including findings of underpayment within one system, where no such finding would be made in another. It is a practical conclusion that any QLD based industrial body could not determine any dispute where underpayment is a result of an interpretation of the national industrial instruments.

This then results in a complex system with added layers of confusion surrounding which body should be contacted initially and when should a matter be referred to the national body. Similarly, there is no proposed protection for employers should a claim be lodged and litigated in both systems.

Overlap with pending Federal laws

The Commonwealth Attorney-General, the Hon Christian Porter MP announced in May 2020 the establishment of five roundtables focusing on key areas of focus for reform including compliance and enforcement.

Legislation will likely be introduced resulting from those roundtables and it is again very likely that the Queensland Government's proposed Bill will overlap with the proposed Federal laws. Accordingly, the proposed Queensland Bill should not proceed until it is clear what the outcome of the roundtables is and what the content of a related Federal Bill will be, if there is one

To proceed with the Queensland Bill at the current time would add yet another layer of complexity to Australia's workplace relations system, resulting in more uncertainty and confusion.

Conclusion

Changes to Federal Laws have seen recent success in addressing the underpayment of wages without criminalisation of the act. Those successes include the self-identification of millions of dollars in underpayment that are in the process of being repaid.

Where the introduction of a State bill would undermine this success by disincentivizing self-disclosure though criminal prosecution we argue that the bill is inappropriate and should be abandoned. Alternatively, so as to avoid introducing potential confusion and complexity, the introduction of any bills should be postponed until at least national legislative reviews into compliance are completed and any resulting bills enacted and their success reviewed against the objectives of this bill.

Should the Committee require any further detail in relation to our submission, please don't hesitate to contact the writer.

Yours Sincerely



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