



# Submission to

Education, Employment and Small Business Committee

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

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submission

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## Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Education, Employment and Small Business Committee for the opportunity to make a submission on the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 (the Bill).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland (QLD) government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives (RM), nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our 63,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNMU.

This year 2020 is dedicated to celebrating the International Year of the Nurse and the Midwife, in celebration of the 200th year anniversary of the birth of the founder of contemporary nursing, Florence Nightingale. The World Health Organisation (WHO) nominated Nurses and Midwives for their invaluable contribution to health care and to highlight the need for a strengthened Nursing and Midwifery workforce to achieve Sustainable Development Goals (SDG) and universal health coverage. The QNMU is proud to embrace this opportunity to invest in the Nursing and Midwifery professions, particularly the investment into minimum safe staffing ratios and skill mix across all health sectors.

The QNMU represents members in both state and federal industrial relations jurisdictions. As a union, we operate on principles of fairness and the common good to restore wage justice for members and workers more broadly. Through our efforts we have recovered a staggering amount of unpaid money for our members. As such, we welcome the intentions of the proposed reforms to take a firm stance on wage theft. However, we wish to raise some considerations about some of the proposed amendments and their practical implications.

The QNMU recognises that not all instances of wage underpayment occur as a result of deliberate or wilful conduct, some occur as a result of employer's negligence, such as inadvertent administrative errors. We acknowledge that the bill focuses on the deliberate and wilful forms of wage theft only.

The following submission can be read in conjunction with the Queensland Council of Unions (QCU) submission. However, we wish to raise some considerations that are specific to the QNMU.

## Recommendations

The QNMU recommends the following:

- Provide a broader scope for the definition of stealing;
- Provide a broader scope for the definition of special property;
- Review the maximum penalties for stealing and fraud;

- Address the practical issues of lodging claims and payment methods to provide a simplified and cost-free application system;
- Provide further clarity around the rules for legal costs associated with wage recovery and criminal proceedings for wage theft.

## Overview

Generally, wage theft refers to an employer's failure to pay wages in full to which a worker is legally entitled.

Wage theft is pervasive and undermines the respect for workers' rights and entitlements. The current labour market provides conditions that perpetuate wage theft. The rise in insecure work, and restrictions on union organising activity and collective bargaining capacity, leads to less protection, less respect and disadvantages workers. This in combination with the higher incidence of insecure jobs, limited wage growth capacity and restricted institutional and law enforcement, increases the risk of workers being exploited.

Wage theft in nursing and midwifery can take many forms. For instance, the following are some examples of wage theft:

- the non-payment or under-payment of wages including overtime including work done during 'meal breaks'), penalties, allowances, meal breaks, leave, leave loadings, superannuation, time off in lieu (TOIL), or any other employee entitlement arising from employment law (including Awards and/or Enterprise Agreements or Certified Agreements, or the employment contract (common law); and

The QNMU has long advocated for the reform of the legal, structural and institutional frameworks that permit wage theft to occur. In our view, the Bill is an important step towards greater deterrence for wage theft and exposing the wilful and deliberate withholding of payments to workers. The Bill also highlights the valuable contribution that trade unions make to restoring wage justice for all workers, not just members.

We also acknowledge the Committee's efforts to implement a wage recovery system that is simplified, timely and cost-effective. The QNMU views this as essential for workers who are already disadvantaged by the act of wage theft and are further discouraged by the complexities of court proceedings and the associated legal costs.

Whilst we support the general impetus of the Bill, we wish to raise the following considerations.

## Amendments to the Criminal Code

### Definition of Stealing

The QNMU commends the Committee for rectifying the imbalance of stealing as an offence that applies only to an employee stealing from an employer. Providing a specific penalty for employers stealing from their employees, will ensure that penalties apply to an employer in relation to wages and entitlements.

Whilst we support the proposed amendments set out in section 391(6A) to the definition of stealing, we believe that the use of the language “in relation to the performance of work by the employee” provides a narrow scope. As this language might not capture other employment-related entitlements which may not arise from the performance of work (e.g. payment for annual leave, during which no work is performed) owed to an employee by an employer. For this reason, we believe that the words should be omitted.

Instead we propose that s391(6A) should read as follows:

(2) Section 391—

*insert—*

(6A) For stealing that is a failure to pay an employee,  
or another person on behalf of the employee, an  
amount payable to the employee or other person  
***by the employee’s employer—***

The QNMU also supports the proposed amendments to section 391(7) to include the definitions of the terms ‘Act’ and ‘industrial instrument’, provides for greater recognition of the fair work instruments, as they apply under the *Fair Work Act 2009* (FW Act) and the industrial instruments as they apply under the *Industrial Relations Act 2016* (IR Act).

### Definition of Special Property

The QNMU supports the new definition of special property proposed in s391(7) however, in our view the use of the language 'in relation to the performance of work by the employee' narrows its scope. As mentioned earlier in relation to the definition of stealing, the QNMU suggests that the words are omitted.

If the Committee elects to retain the use of performance of work by the employee, then the QNMU recommend that a definition of performance of work is inserted.

### Punishment of Stealing

The QNMU commends the Committee for their efforts to strengthen the penalties for employers who intentionally fail to pay or underpay their employees. However, in our view, the proposed 10-year imprisonment penalty for stealing by an employer should be no less than the 14-year maximum penalty for fraud. Such a penalty would provide for greater acknowledgement of the special relationship of trust between employers and employees, in addition to acting as a stronger deterrent. The QNMU considers that a higher maximum penalty should apply to aggravated offences.

The QNMU also recognises the need to identify a representative or nominated person where a corporation is an offender to ensure the deterrent of imprisonment is available for every case of wage theft, including those committed by a corporation.

### Practical application issues

The Bill fails to address the cumbersome aspects of the current application process, particularly the requirement to lodge an application in a Magistrates Court in person with no facility for electronic lodgement and the restrictive use of cheques as the only method of payment. The QNMU recommends as part of this initiative, that a simplified and cost-free application process is enforced that provides for additional payment methods.

We also recommend that the Queensland Industrial Relations Commission (QIRC) review its practices and procedures in relation to the lodgement of documents. The limitation on electronic lodgements for up to 30 pages, is in many cases extremely restrictive for wage claims. Offering a greater page limit for such claims, will provide for a more simplistic and timely process that negates the need to physically present at the registry to lodge claims.

Another significant barrier for employees, is their lack of access to evidence to support their claims. The QNMU suggests that an automatic discovery order is issued by the relevant court to release all appropriate documents held by the employer in relation to the claim, such as payslips, timesheets etc.

The QNMU recommends the need to develop publicly available guidelines on how wage theft matters are to be progressed with the police. To that end, we suggest the need for a dedicated unit for wage theft claims to provide specialised support.

## Wage recovery

### Amendments to the Industrial Relations Act 2016

The QNMU recognises the intentions of the amendments to the IR act, are to facilitate a simplified wage recovery system through the Industrial Magistrates Court. We support the implementation of processes to allow claims brought by Fair Work system employees under the FW Act and state jurisdiction employees under the IR Act. The proposed amendments provide the potential for simplified small claims procedures to be dealt with more efficiently through informal proceedings, with the aim of quick resolution.

A key concern to Unions is the removal of the mandatory conciliation mechanism currently available under the Magistrate's Employment Claims, in favour of a voluntary "opt-out" conciliation model. The QNMU supports the Union position that mandatory conciliation is a strength of the current system that should be retained.

The QNMU does support the usefulness of the QIRC jurisdiction having the ability to conduct conciliation. However, this will require further amendments to the IR Act.

## Legal costs

The QNMU recognises that the burden of legal costs presents a significant challenge for employees seeking restitution of wages. The Bill does not address how the parties will be responsible for costs associated with pursuing wage claims. Whilst the amendments are intended to provide a simplified and low-cost recovery system, and the opportunity to seek criminal penalties, the issue of legal costs remains. The QNMU therefore, seek further clarification of the associated rules for legal costs.

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