



**Submission to the Education, Employment  
and Small Business Committee:**

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

**Queensland Parliament Education, Employment and Small Business Committee**  
Inquiry into the *Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020*

**Submission by the United Workers Union**

*To get my first job in hospitality, when I was 18, I first had to work for free as a “volunteer”. At my next job, I was paid \$18 per hour. No penalty rates, no super. I tried to fight for what I was owed. But I didn’t have proper payslips. I had no idea how to make these bosses pay up. I didn’t have the money to go to court. Eventually, I gave up. I’ve had to accept that I won’t get back my money. It makes me really angry. Now we need the Queensland Parliament to pass strong laws too- so wage thieves go to jail, and it’s quick and easy to win back what we’re owed.*

**– Tara, Hospitality worker, QLD**

**Summary of Submission and Recommendations**

United Workers Union (UWU) supports the intent of the *Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020* (the Bill) to institute a new crime of wage theft in Queensland. UWU believes that two key provisions to remedy wage theft claims – recovery of stolen entitlements and the system of reporting – need to be simplified and improved via legislative amendments to make them more effective for the timely recovery of underpayments owed to workers and to increase the efficiency of the legal process for all parties.

UWU makes the following recommendations:

**Recommendation 1:** That the Bill be passed to criminalise wage theft.

**Recommendation 2:** That the Committee recommends the retention of the current mandatory conciliation process as is available under the current framework.

**Recommendation 3:** That the Government urgently reconvenes a consultation with unions to develop legislative solutions to retain mandatory conciliation.

**Recommendation 4:** That the Government clarifies the funding and resourcing to allow the Industrial Magistrate’s Court to continue to deal with industrial matters quickly and effectively by magistrates experienced in industrial cases.

**Recommendation 5:** That the Committee recommends clarification from the Government relating to the reporting process on the plaintiff’s (wage theft claimant’s) side to ensure claims are not discouraged due to the threat of retribution or costs.

**Recommendation 6:** That the Government commits to review the effectiveness of the claims process within 2 years of commencement of the Act, should the Bill be passed.

## Background

United Workers Union represents almost 30,000 workers in Queensland across a range of public and private sector employers who are engaged in a diverse range of industries and occupations, and who remain under both the State and Federal industrial relations jurisdiction.

Our membership includes ambulance officers, health professionals and operational staff, school cleaners, teacher aides, early childhood educators, those employed in the contracting industries, including but not limited to cleaning, security and hospitality, private prisons and detention centres, aged care workers, logistics and supply chain and farm workers.

United Workers Union has a long and proud history of advocating for and representing the industrial interests of our members whom are employed in a myriad of industries including those who are low-paid, from a non-English speaking background, and otherwise vulnerable and susceptible to instances of wage theft.

UWU predecessor unions United Voice (UV) and the National Union of Workers (NUW) Union contributed to the Committee's inquiry which produced the report entitled A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland ("the Report").

UWU represents four of the five industries that were the focus of the Inquiry Report, namely Accommodation and Food Services, Horticulture, Food Processing and Cleaning and Security.

UWU remains active in wage theft legislation inquiries across other Australian jurisdictions, as well as associated regulatory frameworks including labour hire licensing and reforms to address and prevent migrant worker exploitation.

## Terms of Reference

The committee invites submissions addressing any aspect of the Bill, by 5:00pm, Thursday 30 July 2020. The committee is due to table its report on the Bill by 28 August 2020.

## Objectives of the Bill

According to the Committee webpage<sup>1</sup>, the explanatory notes state that the objectives of the Bill are to implement the underlying policy intent of the recommendations made in the committee's report titled *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*, tabled on 16 November 2018. The two recommendations of the report that require legislative amendments are:

- Recommendation 8 (Simple, quick and low-cost wage recovery process for workers), and
- Recommendation 15 (Criminalisation of wage theft).

Further, that the objectives of the Bill are to be achieved by:

- enabling the prosecution of wage theft as stealing under the Criminal Code;
- increasing the maximum penalties in the Criminal Code for the offences of stealing and fraud relating to wage theft; and
- 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 (Cwth) (FW Act)."

UWU acknowledges that the Bill achieves these objectives, however at the expense of an effective mandatory conciliation process that speeds up claims processing and significantly reduces the number of litigated claims that progress to Court hearing stage. In effect, the Bill in its current form does not achieve a satisfactory solution to Recommendation 8 of the Inquiry Report, which is "to *ensure* that wage recovery processes for Queensland workers are simple, quick and low-cost"<sup>2</sup>.

## Wage theft is a crime

The *Inquiry into Wage Theft in Queensland* firmly established the need for, and basis of, making wage theft a crime in Queensland. Wage theft is an established and systemic problem requiring deterrence by criminal sanction. It is an issue currently relevant to all jurisdictions.

---

<sup>1</sup> Education, Employment and Small Business Committee, Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 inquiry, [www.parliament.qld.gov.au/work-of-committees/committees/EESBC/inquiries/current-inquiries/CCOLAB2020](http://www.parliament.qld.gov.au/work-of-committees/committees/EESBC/inquiries/current-inquiries/CCOLAB2020), accessed 27 July 2020.

<sup>2</sup> *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*, final report of the Inquiry into Wage Theft in Queensland, November 2018, pp. x, 135.

The Australian Government is investigating wage theft legislation through Attorney-General's Department consultations, including the Attorney-General Christian Porter's 18 February 2020 commitment to introduce legislation to criminalise wage underpayments and deliberate worker exploitation<sup>3</sup>. The South Australian Parliament's Legislative Council inquiry into Wage Theft in South Australia is currently investigating the issue<sup>4</sup> and the West Australian Government has introduced legislation to impose civil penalties for wage theft<sup>5</sup>.

The passing through the Victorian Parliament of the *Wage Theft Bill 2020* on 17 June makes that jurisdiction the first to enact criminal penalties for wage theft<sup>6</sup> and, UWU submits, establishes a best practice model for wage theft legislation for the following reasons. Firstly<sup>7</sup>, the *Wage Theft Act 2020 (Vic)* creates three new statutory offences:

- i. dishonest withholding of employee entitlements;
- ii. falsification of employee entitlement records in order to obtain financial advantage for any person, or to prevent exposure of an offence; and
- iii. failure to keep employee entitlement records in order to obtain financial advantage or to prevent exposure of an offence.

Each of these offences is applicable to an employer and any other person on behalf of that employer who 'intentionally assists' in the offence.

Secondly, the Victorian Act creates a new separate authority, The Wage Inspectorate of Victoria, to investigate and prosecute offences, under a Commissioner appointed by the responsible Minister<sup>8</sup>. These combined provisions – specific criminal offences and a separate authority to manage the wage compliance process – are much stronger than the framework afforded by the Queensland Bill, though jurisdictional differences have been noted during the Bill's consultation process.

---

<sup>3</sup> [www.attorneygeneral.gov.au/media/media-releases/more-options-needed-prevent-wage-underpayments-18-february-2020](http://www.attorneygeneral.gov.au/media/media-releases/more-options-needed-prevent-wage-underpayments-18-february-2020)

<sup>4</sup> South Australian Parliament Legislative Council Select Committee on Wage Theft in South Australia, [www.parliament.sa.gov.au/Committees/Committees-Detail](http://www.parliament.sa.gov.au/Committees/Committees-Detail); the Committee is at Interim Report stage.

<sup>5</sup> *Industrial Relations Legislation Amendment Bill 2020*, Parliament of Western Australia, [www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=4FC1A59ABD7EFA80482585920004D57](http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=4FC1A59ABD7EFA80482585920004D57).

<sup>6</sup> Victorian Attorney-General Hon. Jill Hennessey and Minister for Industrial Relations Hon. Tim Pallas, "Wage Theft Legislation Passes Victorian Parliament: Media Release", 17 June 2020, [www.premier.vic.gov.au/wage-theft-legislation-passes-victorian-parliament/](http://www.premier.vic.gov.au/wage-theft-legislation-passes-victorian-parliament/)

<sup>7</sup> *Wage Theft Act 2020* (No.21/2020, Victoria), Part 2; *Explanatory Notes to the Queensland Bill*, pp. 3-4.

<sup>8</sup> *Wage Theft Act 2020* (No.21/2020, Victoria), Parts 3 and 4.

Further, by contrast to the Victorian Act, the Queensland Bill is less specific in defining criminal offences. The Bill inserts amendments to the *Criminal Code* of ‘stealing by employers’ and fraud<sup>9</sup>, without a new offence relating to the failure to keep employee entitlement records. The definition of ‘employer’ and ‘employee’ under the Bill is still somewhat unclear. In terms of penalties, the Queensland Bill is comparable to Victoria’s Act by applying 10 years’ imprisonment for stealing<sup>10</sup>.

UWU recognises that some of key elements of the Victorian framework would require substantially more legislative reform to implement in Queensland and is beyond the scope of the Bill in question. However, The Bill achieves the primary objective of making wage theft a crime in Queensland and so should be passed.

**Recommendation 1:** That the Bill be passed to criminalise wage theft.

### Mandatory conciliation must be retained

#### Case study 1: Youfoodz, Virginia Qld

*UWU visited ready-made meals start-up company Youfoodz in 2017. Since then, union members have uncovered systemic wage theft at its Virginia site. Youfoodz employs a predominantly migrant and young workforce, with some individuals being underpaid in excess of \$30,000 each over a period of two to three years.*

*Wage theft has been reported on extensively at the site, including by the Courier Mail and SBS News. This is an example of a company using wage theft as a business model to run its approximately 300 worker food manufacturing operation. The company has been generally perverse throughout the recovery process, which continues today.*

UWU rejects the proposed changes in the Bill that would make conciliation optional for the parties to a wage theft claim.

Currently, Part 5A of the Magistrates Court Act 1921 sets out processes for employment claims. Included in these processes is a conciliation process conducted by a conciliator appointed by the registrar of the Magistrates Court<sup>11</sup>. In conducting this conciliation

---

<sup>9</sup> Clauses 4, 5 and 6 of the Bill.

<sup>10</sup> Cf. Clause 5 of the Bill and Part 2 of the *Wage Theft Act 2020* (No.21/2020, Victoria).

<sup>11</sup> Magistrates Court Act 1921(Qld), s.42F.

process, the appointed conciliator may require parties to attend or otherwise participate in a conciliation conference<sup>12</sup>. Parties must comply with the requirement to attend or participate in such a conciliation conference.<sup>13</sup> For the purposes of this submission, UWU refers to this process as “mandatory conciliation”.

The Bill establishes a jurisdiction for dealing with wage claims in the Industrial Magistrates Court. Unlike the current provisions under Part 5A of the Magistrates Court Act, the Bill removes the compulsion for parties to attend mandatory conciliation, instead enabling a party to refuse to participate in conciliation.

This proposed amendment detracts from the Bill’s underlying policy intent of implementing a “simple, quick and low-cost wage recovery process for workers.”

Key to ensuring that such a wage recovery process remains simple, quick and low-cost is access to alternative dispute resolution processes such as mandatory conciliation.

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

#### **Case Study 2: PM Fresh, Morningside Qld**

*PM Fresh provides salads and other fresh food to major supermarkets, fast food outlets and transport companies. The UWU holds an arbitrated decision from the Fair Work Commission against PM Fresh with regard to afternoon shift loading and the rostering of part-time workers at its Colmslie operations. In the decision, the Commissioner considered:*

*‘...they [PM Fresh] must be either extraordinarily naive, or have been, for many years, provided with incorrect information to pay to MCK payment rules where they provide for a reduced entitlement to employees than the Agreement.’ [2020] FWC 1388 at [162]*

*As a result of this decision and the mismanagement of the site an underpayment of hundreds of thousands of dollars exists going back six years, being the statutory time limit. The UWU is currently in discussions with the company around the major underpayment. Again, to ensure the expedient recovery of wages the Bill must have mechanisms to meet with employers who underpay their workers to arrange resolution.*

---

<sup>12</sup> Magistrates Court Act 1921(Qld), s.42H(1).

<sup>13</sup> Magistrates Court Act 1921(Qld), s.42H(2).

UWU argues that mandatory conciliation be retained and appropriate legislative amendments to the Bill be made to achieve that end. UWU is ready and willing to engage with the Government and other unions to ensure that conciliation is an outcome of making a claim under the proposed framework, which requires strengthening and clarification in the Bill in its current form.

**Recommendation 2:** That the Committee recommends the retention of the current mandatory conciliation process as is available under the current framework.

**Recommendation 3:** That the Government urgently reconvenes a consultation with unions to develop legislative solutions to retain mandatory conciliation.

### **The Wage Recovery and Court System must be appropriately resourced**

The Bill must not risk greater expenditure of taxpayer money for a wage claims system that is less effective than current. Wage theft must be a crime and recompense for workers subject to that offence must be efficient and effective.

The wage recovery system will be most effective if it is administered by experienced industrial magistrates and registrars in the first instance, with the power to send matters to conciliation that would otherwise accumulate in the justice system and become protracted.

The system must be enabled and resourced to perform timely and accessible claims for workers, who are at a significant disadvantage when forced to make such claims.

UWU recognises that to ensure the Court system be appropriately resourced, legally qualified industrial commissioners be appointed as industrial magistrates. This will allow for the determination of matters to be made quickly and cost-effectively.

**Recommendation 4:** That the Government clarifies the funding and resourcing to allow the Industrial Magistrate's Court to continue to deal with industrial matters quickly and effectively by magistrates experienced in industrial cases.

### **Reporting wage theft must not disadvantage workers**

There remains uncertainty about the proposed reporting framework for wage theft in relation to how police and other government agencies would engage with a worker with a claim.

UWU is concerned that members may be intimidated by the process and fearful of retribution from employers or within industry networks if they make a wage theft claim. Many of the



workers who are subject to wage theft are vulnerable to job insecurity, whether it is because they are casual workers, migrant and non-English speaking background workers, contract workers or simply because they are on minimum rates of pay.

For these reasons among others, workers must feel safe and confident that a wage theft claim will be dealt with fairly and in a timely manner, to ensure that excessive time and effort with little guarantee of justice does not become a deterrent to making a wage recovery claim.

So far there is further detail to be given by the Government regarding the form of submission of a claim and the protections to be afforded to parties under the proposed framework. UWU submits that the Committee seeks clarification from the Government on what the process looks like from the perspective of workers and all parties to a claim of wage theft.

**Recommendation 5:** That the Committee recommends clarification from the Government relating to the reporting process on the plaintiff's (wage theft claimant's) side to ensure claims are not discouraged due to the threat of retribution or costs.

### **Wage recovery processes require review and improvement**

Regardless of the form of Bill that does pass the Parliament, the effectiveness of wage theft prosecution, deterrence and wage recovery processes must be reviewed to ensure fitness for purpose.

UWU is primarily concerned to ensure that, where there is a need to pursue wage theft claims on behalf of workers, proven claims must be demonstrated to be reimbursed in a timely, low cost manner.

UWU submits that a review point of two years from commencement of any new wage recovery process in Queensland is appropriate to ensure legislation is effective.

**Recommendation 6:** That the Government commits to review the effectiveness of the claims process within 2 years of commencement of the Act, should the Bill be passed.

## Conclusion

United Workers Union commends the Queensland Government for introducing this Bill and addressing the needs of vulnerable workers. However, we would like to see amendments to the legislation to ensure both conciliation and timely determination of claims are retained.

The wage recovery process must be enabled and resourced to achieve these outcomes and avoid lengthy and costly litigation. Further clarity on the reporting process for claims of wage theft is needed and legislative review of any new wage recovery process would be appropriate.

UWU would welcome the opportunity to give evidence before the Committee, should the invitation be made.

For more information on this submission, please contact [REDACTED] via email at [REDACTED] or on [REDACTED].



**Gary Bullock**

**Political Director**

**United Workers Union**

Thursday, 30 July 2020

.