




Speech By
Hon. Grace Grace

MEMBER FOR MCCONNEL

Record of Proceedings, 15 July 2020

**CRIMINAL CODE AND OTHER LEGISLATION (WAGE THEFT) AMENDMENT
BILL**

Message from Governor

 **Hon. G GRACE** (McConnel—ALP) (Minister for Education and Minister for Industrial Relations) (11.23 am): I present a message from His Excellency the Governor.

Mr DEPUTY SPEAKER (Mr McArdle): The message from His Excellency recommends the Criminal Code and Other Legislation (Wage Theft) Amendment Bill. The contents of the message will be incorporated in the *Record of Proceedings*. I table the message for the information of members.

MESSAGE

CRIMINAL CODE AND OTHER LEGISLATION (WAGE THEFT) AMENDMENT BILL 2020

Constitution of Queensland 2001, section 68

I, PAUL de JERSEY AC, Governor, recommend to the Legislative Assembly a Bill intituled-


A Bill for an Act to amend the Criminal Code, the Industrial Relations Act 2016, the Magistrates Courts Act 1921 and the Queensland Civil and Administrative Tribunal Act 2009 for particular purposes

GOVERNOR

Date: 15 July 2020

Tabled paper: Message, dated 15 July 2020, from His Excellency the Governor, recommending the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 [[1166](#)].

Introduction

 **Hon. G GRACE** (Brisbane Central—ALP) (Minister for Education and Minister for Industrial Relations) (11.23 am): I present a bill for an act to amend the Criminal Code, the Industrial Relations Act 2016, the Magistrates Courts Act 1921 and the Queensland Civil and Administrative Tribunal Act 2009 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Education, Employment and Small Business Committee to consider the bill.

Tabled paper: Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020 [[1167](#)].

Tabled paper: Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020, explanatory notes [[1168](#)].

Tabled paper: Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020, statement of compatibility with human rights [[1169](#)].

I am pleased to introduce a bill to criminalise wage theft and create a simple, quick and low-cost wage recovery process for workers. This bill is for all Queensland workers who have fallen victim to wage theft and unpaid or underpayment of wages to provide a clear, quick and simplified way for them to recover their wages. It is hoped that the criminalisation of wage theft will deter employers from engaging in wage theft, particularly those who engage in it as a business model.

This bill responds to recommendations made in the report tabled on 16 November 2018 by the Education, Employment and Small Business Committee titled *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*. The committee's report set out the findings of the 2018 Queensland parliamentary inquiry into wage theft in Queensland. The report found that wage theft is endemic across Queensland, affecting 437,000 workers and costing them approximately \$1.22 billion in wages and \$1.12 billion in unpaid superannuation each year. The committee highlighted the bleak situation facing underpaid workers who must attempt to navigate the legal system to recover their wages, with approximately half of affected workers opting not to even pursue a claim. The report found that a lack of federal government action and an under-resourced Fair Work Ombudsman had significantly limited the wage recovery options for workers and failed to deter the most serious incidents of wage theft.

Submissions to the inquiry showed there was broad support for the criminalisation of wage theft and the development of options for simple, low-cost jurisdictions for workers to recover wages. The committee made 17 recommendations, all of which the government accepted or supported in principle. This bill will implement the committee's recommendations with regard to the criminalisation of wage theft and the establishment of an accessible small claims process for wage recovery matters for all Queensland workers. The committee recommended criminalisation of wage theft as a deterrent to employers engaging in this practice and to punish employers who deliberately underpay their workers.

As a proud former union official, I saw firsthand the devastating impact unpaid wages and wage theft have on workers and their families who rely upon their income to survive. As the Minister for Industrial Relations, I have also met countless workers who have told me about their experiences with unpaid wages and wage theft. As late as last week, I met with members from the United Workers' Union who bravely shared their powerful stories with me. This goes to show that, even during this global COVID-19 crisis, wage theft is occurring. Now more than ever, workers' pay deserves to stay in their pockets.

Since the committee tabled its report, more and more high-profile cases of wage theft and underpayment have continued unabated. Coles confessed to underpaying salaried employees about \$20 million over the past six years. Target admitted to underpaying staff about \$9 million. Bunnings underpaid its staff about \$4 million in superannuation entitlements. Woolworths underpaid employees up to \$300 million over 10 years. Super Retail Group admitted to not paying managers overtime to the tune of \$32 million. George Calombaris's MAdE Establishment underpaid \$7.8 million in wages and superannuation. Michael Hill announced that it would be making \$25 million worth of repayments to current and former employees. The list goes on and on and keeps growing. Behind the personal stories and these astounding figures are hardworking people who have been denied their rightful entitlements to pay and superannuation. This is wrong, heartbreaking and must be addressed.

Following the tabling of the committee's report, the Palaszczuk government has written multiple letters and made numerous submissions to the federal government advocating for it to criminalise wage theft. However, to date there has been no action in response and the time for action is now. Queensland is a Criminal Code jurisdiction. The intent of the Criminal Code is that it is an exhaustive statement of the law containing offences of general application.

Stealing is an offence of general application and has a maximum penalty of five years imprisonment. The offence of stealing has application for theft by a worker against their employer and includes an increased penalty to 10 years imprisonment in recognition of the special relationship of trust between an employer and worker. However, there is no corresponding specific penalty for stealing by an employer from their worker.

This bill proposes to rectify this historical difference by amending the definition of 'stealing' in the Criminal Code to ensure the offence and corresponding penalty applies to employers in relation to wages and entitlements. The offence of stealing occurs when an employer intentionally fails to pay the amount, when it becomes payable under an act, industrial instrument or agreement, to the employee or to the other person on behalf of the employee with an intent to permanently deprive the person of the amount.

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. It is intended that the offence will capture a broad range of entitlements including unpaid hours or underpayment of hours; unpaid penalty rates; unreasonable deductions; unpaid superannuation; withholding entitlements; underpayment through misclassifying a working including wrong award, wrong classification or by 'sham contracting'; the misuse of Australian business numbers—my own daughter fell victim to that one; and authorised deductions that have not been applied as agreed.

The bill also contains amendments to increase the maximum penalty for fraud by an employer where the offender is the employer of the victim consistent with the penalty applying to fraud by an employee. The bill therefore provides for a maximum of 14 years imprisonment for fraud against a worker by their employer.

The amendments to the Criminal Code 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. The committee also recommended that a simple, quick and low-cost system for wage recovery process be made available to assist workers who have been underpaid or unpaid. The bill seeks to implement this recommendation by amending the Industrial Relations Act 2016 to utilise the Industrial Magistrates Court and the quick and informal wage recovery claim procedure under the Fair Work Act 2009.

The amendments provide that wage recovery claims will be referred to conciliation prior to a hearing unless a party to the matter advises that they will not participate in conciliation. It is considered that genuine engagement of the parties in conciliation will result in the prompt and low-cost resolution of the majority of wage claims. If the parties cannot resolve the claim, then the conciliator can assist parties to narrow the scope of the matters in dispute which will significantly reduce the complexity and time required to resolve the matter when it progresses to the Industrial Magistrates Court for hearing and resolution.

If conciliation is not successful, Fair Work system workers pursuing a small claim of not more than \$20,000 will be able to access the small claims process under the Fair Work Act. Under this process, the Industrial Magistrates Court is not bound by rules of evidence and procedure, allowing for proceedings to be conducted informally without regard to legal forms and technicality and with legal representation only with the leave of the court. For claims above \$20,000, the Industrial Magistrates Court will use the Industrial Relations (Tribunal) Rules 2011 to facilitate a prompt, simple and more cost-effective process for the hearing and resolution of the claim.

While the primary objective of the bill is to provide Fair Work system workers with fairer access to wage recovery methods, the amendments to the Industrial Relations Act ensure that state system workers also have a clear pathway for wage recovery matters. For far too long the dishonest treatment of workers has gone unnoticed and unpunished. However, the time waiting for a national response on the scourge of wage theft is over. The Queensland government has no other option but to act now.

The combination of criminalisation of wage theft and the facilitation of quick, simple and low-cost wage recovery processes will assist workers to get a fair day's pay for a fair day's work, will make employers who engage in wage theft criminally responsible for their actions and will act as a deterrent for employers engaging in these practices. I commend the bill to the House.

First Reading

Hon. G GRACE (McConnel—ALP) (Minister for Education and Minister for Industrial Relations) (11.42 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Education, Employment and Small Business Committee

Mr DEPUTY SPEAKER (Mr McArdle): In accordance with standing order 131, the bill is now referred to the Education, Employment and Small Business Committee.