




Speech By
Hon. Grace Grace

MEMBER FOR MCCONNEL

Record of Proceedings, 9 September 2020

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

Second Reading

 **Hon. G GRACE** (McConnel—ALP) (Minister for Education and Minister for Industrial Relations) (11.30 am), continuing: Ms Small said that she did not know where to turn to or what she could do about her situation. She told the committee—

It is extremely important for these wage theft laws to go through for our hospitality workers who are already being underpaid, who are already on the lowest amount of pay that employers can put them on. We are struggling and we need this to go through to help us.

After hearing from workers like Tara, I am delighted that the committee has recommended that the bill be passed. Unfortunately, the LNP members of the committee decided to make a statement of reservation, which begs the question of how they intend to vote on this bill. Will they again vote against a bill that is about supporting and protecting Queensland workers and Queensland businesses doing the right thing—just as they did with our labour hire licensing laws and industrial manslaughter laws? They voted against establishing the parliamentary inquiry into wage theft, they failed to support the 17 recommendations of the committee to help combat wage theft and they did not support the recommendation of the parliamentary committee that the bill be passed. The facts are that they have no record of supporting improvements to the rights and entitlements of Queensland workers. Will this time be any different?

The committee made one other recommendation—that the conciliation process for fair work claims commenced under the Industrial Magistrates Court be mandatory, with employers and employees required to make ‘reasonable attempts’ at reaching agreement through that conciliation process. After careful consideration of this recommendation and the various policy and legal arguments advanced, the government has decided to retain the existing conciliation provisions in the bill. We recognise the many submissions made on this particular issue, and the government commits to monitoring and reviewing these provisions after six months of operation. I table our response to the committee report.

Tabled paper: Education, Employment and Small Business Committee: Report No. 35, 56th Parliament—Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020, government response [[1584](#)].

I now turn to the two key features of the bill. The first is the criminalisation of wage theft. The Criminal Code as it currently stands comes down very hard on workers caught with their hands in the till, but there is no corresponding offence for unscrupulous bosses who intentionally steal from their workers or defraud them. The amendments we propose to make to the Criminal Code will rectify this current imbalance in the law. As young worker Declan Langlands told the committee—

I cannot take money from a till without being punished. Why can they take money from my wages without being punished?

Under the new laws, the maximum penalty for stealing by an employer will be the same as the current maximum penalty for 'stealing as a clerk or servant' under section 398 of the Criminal Code, which is 10 years imprisonment. To ensure that wage theft is captured, the bill amends the definition of 'stealing' in section 391 of the Criminal Code to provide that the offence 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. The Criminal Code also currently includes a higher maximum penalty of 14 years jail for the offence of fraud where the employee is the offender. The bill will amend the Criminal Code to provide that, if an employer commits fraud against an employee, the maximum penalty will also be 14 years jail.

The change to make wage theft a criminal offence recognises that the current regulatory framework is not doing the job—something needs to change to stop rampant wage theft. Stronger penalty and deterrence measures are needed for those who commit wage theft, particularly where it is deliberate and systemic and part of an employer's business model. Employers who gave evidence to the wage theft inquiry recognised this. Allan Mahony from Bundaberg Fruit and Vegetable Growers said, 'We should see this as a crime.' It is rampant in that area and they know about it. The ones doing the right thing are being hurt by those who are doing the wrong thing. Andrew Bourke from Executive Security Group said—

There have to be criminal penalties ... if I put my hand in my staff member's pay packet, it is theft.

Once again, those who do the right thing are being undercut by those who are doing the wrong thing and get away with it. Amanda Wessel from Wessel Petroleum said the employers who commit wage theft—

... should go to jail because the person who steals the money is stealing for themselves out of the till. These guys are making other workers suffer.

This amendment will send a strong message to the community that wage theft is not acceptable. It is a crime and can be prosecuted as such. Can I make clear again that the criminal offence applies only to deliberate cases of wage theft. This is not about putting a small business owner who makes an honest mistake in jail. No one is arguing that—no-one.

The existing elements of the offences of stealing, fraud and falsification of records in the Criminal Code and the application of defences and excuses operate generally so that a person is not criminally responsible if they are acting honestly or without intent. Requiring intent to be proven means that an employer who has made a genuine mistake regarding an employee's entitlements can access the defence of honest claim of right under the Criminal Code. The criminalisation of wage theft provisions will commence on assent.

The second key feature of this bill is a simple, streamlined wage process for workers to recover their entitlements. This recognises that the first and main priority for workers who have been the victim of wage theft is to get back the money they are owed. My own daughter has been a victim of this. The process for doing this should be simple, quick and low cost. It is not at the moment. The wage theft inquiry found the current wage recovery processes through the courts are costly, complex and time consuming and deter workers from taking action to report and recover lost wages—so much so that around half of unpaid or underpaid workers opted not to even pursue a claim.

Adriaan Burgess, who appeared before the committee inquiry into the bill, really nailed it when he said—

We need a quicker way to get our wages back. It is not fair. We have bills to pay. We have rent to pay. It is hard enough with COVID. We really need a decision made by parliament to make it quicker for us to recover our wages.

The bill addresses this by providing for a new simple, quick and low-cost wage recovery process for all workers through the Industrial Magistrates Court, including access to the simplified small claims procedure in the Fair Work Act 2009. The Industrial Magistrates Court has been designed to be used by laypersons in a less prescriptive and informal manner. Upon the receipt of a wage recovery claim in the Industrial Magistrates Court, the Industrial Registrar may refer the matter to a member of the Queensland Industrial Relations Commission for conciliation in the first instance. Conciliation provides an opportunity for parties to reach agreement or narrow the issues in dispute before a hearing. Information disclosed in conciliation will remain confidential, allowing parties to speak freely without fear of things said or done in conciliation potentially prejudicing a later hearing. If a claim is not resolved at conciliation, the claim will move to the Industrial Magistrates Court for hearing by an industrial magistrate.

For claims under \$20,000, Queensland workers under the Fair Work system will be able to access the small claims process under the Fair Work Act. This means the Industrial Magistrates Court is not bound by rules of evidence and procedures, allowing for proceedings to be conducted informally.

To encourage low-cost resolution, legal representation will only be allowed with leave of the court. For claims above the \$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 a claim. These new wage recovery provisions will commence on a date to be proclaimed. I note the department advised the committee that it will be developing forms and guidance material to assist workers to pursue their wage recovery, including online resources with a step-by-step guide for completing necessary court forms.

I will also be moving an amendment during consideration in detail to the Industrial Relations Act 2016 to enable authorisation in writing by an employee for information to be shared between a state system employer and a Queensland registered industrial organisation. This will, for example, assist employees and their registered industrial organisation to efficiently identify the employee's correct classification and industrial instrument and assist in ensuring that the employee is receiving their lawful entitlements. Often workers do not even know under what agreement they are being paid and they do not know what classification they are under. Very little information is given to them and this will enable them to obtain that.

As Minister for Industrial Relations and a lifelong trade unionist, I am proud to stand in this House today to debate and advocate for this bill. The bill is about defending and supporting one of the most fundamental tenets of our industrial relations system, the right for a fair day's pay for a fair day's work. It continues the proud record of the Palaszczuk government in protecting and advancing the rights of Queensland workers. It is a long list and includes paid pandemic leave, the first in the country; nation-first labour hire licensing laws; nation-first paid domestic and family violence leave; industrial manslaughter laws, the first state in Australia to introduce them; portable long service leave for Community Services workers; restoring the rights of injured workers to access common law damages; ensuring workers with CWP, black lung and other work related lung disease receive their full and just entitlements; and presumptive workers compensation laws for firefighters with specified forms of cancer. I am proud to add to that list today a bill to make wage theft a criminal offence and create a simple, quick and low-cost wage recovery process for workers to get back what is owed to them. We have waited too long for the federal government to act. They have not acted. We will be acting while they sit on their hands.

Mrs Wilson: That is what we said in 2018. You could have acted earlier yourself.

Ms GRACE: I will take that interjection because at the end of the day those opposite are all about being soft on people who steal from workers.

Mrs Wilson: That is rubbish. You failed to include yourself in the scope.

Ms GRACE: It will be interesting to see how they vote on this bill. This matter is fundamentally in the federal jurisdiction.

Mrs Wilson interjected.

Ms GRACE: The member for Pumicestone does not even understand the industrial relations system. It largely falls under the federal jurisdiction. What we are doing here is filling a gap which the federal government have refused to do even though at the last election they promised to introduce wage theft as a criminal offence. The federal minister has sat on his hands and done nothing.

Our inquiry exposed the full extent of wage theft in this state and we are proud to be moving in that direction as soon as we have been able to. Unless the member for Pumicestone knows better, it is largely under the federal jurisdiction that all this is occurring, not under the state. The member for Pumicestone should get her facts right before she decides to interject. I will take the interjections from the member for Pumicestone, but I suggest she goes and studies her industrial relations laws and acts because she does not know what she is actually saying.

Ms Simpson: Pity about the public servants who didn't get paid in Queensland.

Mr DEPUTY SPEAKER (Mr McArdle): Member for Maroochydore, thank you.

Ms GRACE: I will take that interjection from the member for Maroochydore as well, because when it came to sacking those public servants, when it came to cutting, sacking and selling, they did not seem to mind very much at all.

Mr DEPUTY SPEAKER: Minister, I think we are moving—

Ms GRACE: I am taking the interjection from the member for Maroochydore.

Mr DEPUTY SPEAKER: Resume your seat. I will have silence in the House, thank you. Minister and members, we are moving off the bill. Even the extent of standing order 139 will not cover the issue of the payroll situation.

Ms GRACE: We are moving to regulate an area that was promised by the federal government, who are still sitting on their hands doing nothing. Once again, this bill demonstrates that Labor and only Labor will deliver for Queensland workers who need it most, and those opposite are soft when it comes to these terrible crimes against workers in this state. I commend the bill to the House.