




Speech By  
**Laura Gerber**

**MEMBER FOR CURRUMBIN**

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Record of Proceedings, 9 September 2020

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

 **Mrs GERBER** (Currumbin—LNP) (2.00 pm): I rise this afternoon to speak on the Criminal Code and Other Legislation (Wage Theft) Amendment Bill. First and foremost, the LNP believes that workers deserve to be paid for the work they do. No-one wants to see workers not being paid what they are owed, and Queenslanders deserve the dignity of having a job and being appropriately paid for the work they do. This is particularly important during this global pandemic where, under the Palaszczuk Labor government, Queensland has the highest rate of unemployment in the nation—higher even than Victoria.

The objectives of the bill are: to implement the underlying policy intent of the recommendations made in the Education, Employment and Small Business Committee's report *A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland*. There are two recommendations contained in the report that require legislative amendments to take effect; namely, recommendation 8, the introduction of a simple, quick and low-cost wage recovery process for workers, and recommendation 15 in relation to the criminalisation of wage theft.

The objectives of the bill are achieved by implementing the following legislative mechanisms: by enabling the prosecution of wage theft as stealing under the Criminal Code; by increasing the maximum penalties in the Criminal Code for the offences of stealing and fraud relating to wage theft; and by facilitating the Industrial Magistrates Court's jurisdiction for wage recovery matters, including small claims wage recovery procedures for matters of not more than \$20,000 under section 458 of the Commonwealth Fair Work Act.

Fundamental to any business's success is maintaining a balanced and respectful employment relationship. No-one wants to see money ripped from workers' pockets, especially where the conduct is deliberate and deceitful. Unlike those opposite, the LNP has a strong track record of preselecting small business people to enter the parliament. I am sure the members who have owned a business would agree that navigating their way around the various layers of legislation, awards and certified agreements is complex. Even the most successful businesspeople make mistakes. This extends to employment lawyers and HR staff, who every day are caught up in disputing complex employment law issues.

The bill seeks to amend the definition of stealing contained in section 391 of the Criminal Code. Proposed new section 391(6A) provides—

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 in relation to the performance of work by the employee—

(A) the amount is a thing that is capable of being stolen;

An amount payable to an employee or other person in relation to the performance of work by the employee is not defined in the bill, but it is intended to capture a broad range of payments and entitlements including, but not limited to: unpaid hours or underpayment of hours; unpaid penalty rates; unreasonable deductions; and withholding unpaid superannuation.

The amendment to this definition of stealing is welcomed by the LNP because the withholding of an entitlement necessitates there to be intent; in other words, the proof of dishonesty. Importantly, for an employer to be charged with the new offence the act must be fraudulent. This will hopefully provide some relief to the hundreds and thousands of business owners who, with the very best of intentions, inadvertently pay an employee less than their prescribed entitlement due to complex award structures or administrative errors. We in the LNP do not want to see struggling businesses prosecuted for making honest mistakes, particularly in these complicated times.

I reiterate that the LNP will not oppose this bill, but an LNP government would monitor these laws to ensure they do not result in businesses being pursued for honest mistakes which they subsequently rectify. We have committed to this because in the LNP we work with stakeholders. Unlike the Palaszczuk Labor government, which does not consult, we in the LNP listen to what the business community is saying. The LNP does not oppose this bill, but we have several issues with the bill and it is my duty to raise these. First and foremost amongst these is the jurisdictional issue created by introducing legislation that could be inconsistent with the Commonwealth's Fair Work system, which could potentially result in these laws being deemed unconstitutional.

The federal Fair Work system was created by the Fair Work Act 2009 and covers the vast majority of private sector employees. The Fair Work system is more than adequately represented by the Morrison government and the federal Attorney-General and Minister for Industrial Relations, the Hon. Christian Porter. Despite this, there is no mention of there being any consultation with the federal government on drafting this bill. Those workers in the minority who fall outside of the Fair Work Act are regulated by state industrial laws. These workers are those on which the Palaszczuk Labor government should focus its attention. State intervention into the federal employment law arena is a concern echoed by many stakeholders who made submissions on this bill, including the Housing Industry Association, the Chamber of Commerce and Industry Queensland and the National Retail Association, to name a few.

Queensland is not the only state in which this issue has been raised. In Victoria, academics Melissa Kennedy and Professor John Howe have strongly argued that the Victorian and New South Wales applications of wage theft are likely to 'face unconstitutional challenges based on inconsistency between state law and Commonwealth law.' As was highlighted in the Education, Employment and Small Business Committee's inquiry on the issue of wage theft, the Palaszczuk Labor government has attempted to use this issue to undermine the federal industrial relations system. As the LNP said in the statement of reservation—

The LNP attempted to include workers and contractors under direct control of the Queensland Government. The Palaszczuk Government voted down sensible amendments that would have compelled the inquiry to investigate Labor's on-going health payroll debacle, as well as the underpayment of security guards and other contractors at the Commonwealth Games and the use of contractors in the public service—an issue that has been consistently raised by the Together Union.

Labor voted this down because they do not want to be held accountable for their own wage theft from hardworking Queenslanders. Members should not forget that it was the Bligh Labor government that referred significant elements of our private sector industrial relations jurisdiction to the Commonwealth in 2009. This was a move that the LNP opposed at the time. That bill was moved by the current Treasurer, the member for Woodridge, and supported by the Premier and the Minister for Industrial Relations. Now this Labor government is attempting to undermine the federal IR system—one they were happy to be a part of in 2009. Why? Because Labor is no longer in power federally. I note the comments of the department as stated in the committee report—

The Queensland Government is confident about the validity of the provisions having regard to existing Commonwealth laws. If the Commonwealth introduces wage theft criminal laws, that will be a matter for the Government to consider at that time, having regard to the specific nature of the reforms and drafting of relevant provisions.

To provide certainty to businesses and workers the minister should advise whether Crown Law advice has been obtained in relation to the constitutional validity of these laws, and if so that advice should be publicly released.

Stakeholders also raised concerns about the impact of complex award conditions on small businesses; the current state of the economy; whether conciliation needs to be compulsory as a low-cost option for mediating disputes between employers and workers; and the duplication of provisions under the Fair Work Act and the Fair Work Ombudsman.

Again, the LNP believes that all workers deserve to be paid for the work they do. The Palaszczuk Labor government needs to show how its laws will not be struck down as unconstitutional. The LNP is the only party that Queenslanders can trust to build a stronger economy and get Queensland working again.