

<p style="text-align: center;"><b>PARLIAMENTARY INQUIRY INTO WAGE THEFT IN QUEENSLAND</b> <b>QUEENSLAND GOVERNMENT RESPONSE</b></p>
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On 17 May 2018, the Queensland Legislative Assembly referred an Inquiry into Wage Theft in Queensland (the inquiry) to the Education, Employment and Small Business (EESB) Committee.

In undertaking the inquiry, the committee was required to consider:

- (a) the incidence of wage theft in Queensland, with reference also to evidence of wage theft from other parts of Australia;
- (b) the impact of wage theft on workers, families, law-abiding businesses, the economy and community;
- (c) the various forms that wage theft can take, including through unpaid super, the misuse of ABNs and sham contracting arrangements;
- (d) the reasons why wage theft is occurring, including whether it has become part of the business model for some organisations;
- (e) whether wage theft is more likely to occur in particular industries, occupations or parts of the state or among particular cohorts of workers;
- (f) the effectiveness of the current regulatory framework at state and federal level in dealing with wage theft and supporting affected workers; and
- (g) options for ensuring wage theft is eradicated, including consideration of regulatory and other measures either implemented or proposed in other jurisdictions interstate, nationally or internationally and the role of industrial organisations, including unions and employer registered bodies in addressing and preventing wage theft.

The EESB Committee tabled its report on the inquiry on 16 November 2018.

The Queensland Government thanks the Members and Secretariat of the EESB Committee for their work over the course of the inquiry. The Government also thanks those individuals and organisations who made written submissions, and especially those people who gave personal accounts of their experiences of wage theft at the EESB Committee's hearings and through the online survey.

### **Responses to recommendations**

#### **Recommendation 1**

The Committee recommends the Queensland Government conduct a public education campaign to assist in the fight against wage theft, including outlining information on the findings from this inquiry and the measures the Queensland Government is taking in response, and how and where affected workers can go for help to recover their lost wages.

#### **Government response**

The Government supports the recommendation in-principle, subject to further consideration of the jurisdictional and resource implications.

## **Recommendation 2**

The committee recommends the Queensland Government re-establish the tripartite Industrial Relations Education Committee (IREC) under the auspices of the Office of the Industrial Relations to conduct visits to schools, TAFE and VET providers, and universities. The visits would be conducted on an opt-in basis and provide information focusing on the rights and responsibilities of both workers and employers.

### **Government response**

The Government supports the recommendation in-principle, subject to further consideration of the jurisdictional and resource implications.

## **Recommendation 3**

The committee recommends the Queensland Government, through the Department of Education, work with the higher education sector in Queensland to ensure international students have access to relevant information and advice on their workplace rights in Australia, including the right to join a union and where to go for further information.

### **Government response**

The Government supports the recommendation in-principle, subject to further consideration of the jurisdictional and resource implications.

## **Recommendation 4**

The committee recommends the Federal Government introduce a national labour hire licensing scheme so the benefits of the Queensland scheme can apply across the country.

### **Government response**

The Government accepts the recommendation.

## **Recommendation 5**

The committee recommends the Queensland Government ensure its current procurement policies allow for appropriate and proportionate action to be taken against companies that have underpaid workers.

### **Government response**

The Government accepts the recommendation.

## **Recommendation 6**

The committee recommends the Federal Government consider measures to improve worker access to representation in the workplace and ensure compliance with industrial instruments, using the model of the *Industrial Relations Act 2016* (Qld).

### **Government response**

The Government accepts the recommendation.

## **Recommendation 7**

The committee recommends the Federal Government appoint additional Federal Circuit Court Judges in Queensland, and ensure Queensland retains its proportionate share of Federal Circuit Court judges.

### **Government response**

The Government accepts the recommendation.

### **Recommendation 8**

The committee recommends the Queensland Government review and take actions available to it, to ensure that wage recovery processes for Queensland workers are simple, quick and low-cost. This should include further investigation of the following options:

- a) establishing a dedicated industrial division within the Queensland Magistrates Court, in line with the example in Victoria
- b) investigating the inclusion of the Queensland Industrial Relations Commission or Industrial Court as an eligible state court under the *Fair Work Act 2009* (Cth)
- c) reviewing relevant forms and processes to ensure the legal process is simple and user friendly for workers and their representatives
- d) waiving or reducing current court filing fees for wage theft matters.

### **Government response**

The Government supports the recommendation in-principle, subject to further consideration of the jurisdictional and resource implications.

### **Recommendation 9**

The Committee recommends unpaid superannuation be included as a recoverable entitlement under the Fair Entitlements Guarantee scheme and the Fair Entitlements Guarantee scheme be extended to temporary overseas visa workers who are currently denied access.

### **Government response**

The Government accepts the recommendation.

### **Recommendation 10**

The committee recommends that the Federal Government fund a workplace rights information and support service based in Queensland, as is funded for other Australian jurisdictions and was formerly the case, up until the removal of funding in 2016 by the then Federal Government.

### **Government response**

The Government accepts the recommendation.

### **Recommendation 11**

The committee recommends the Federal Government take immediate steps to appoint additional Fair Work inspectors in Queensland under the *Fair Work Act 2009* (Cth).

### **Government response**

The Government accepts the recommendation.

### **Recommendation 12**

The committee recommends the Federal Government establish a full, independent review into the performance, resourcing and culture of the Fair Work Ombudsman to ensure that it can respond to wage theft and support affected workers in an effective and timely fashion.

Among other things, the review should consider the findings and recommendations of the Best Practice Review into Workplace Health and Safety Queensland which have driven a cultural shift from education to compliance.

### **Government response**

The Government accepts the recommendation.

**Recommendation 13**

The committee recommends superannuation be included as an industrial entitlement in the National Employment Standards.

**Government response**

The Government accepts the recommendation.

**Recommendation 14**

The committee recommends the Fair Work Commission be given the power to assess the status of an employment contract similar to that available to the Queensland Industrial Relations Commission under the *Industrial Relations Act 2016* (Qld), and that further consideration be given to removing the 'reckless defence' from the offence of sham contracting under section 357(2) of the *Fair Work Act 2009* (Cth) and introducing a new 'reasonable person' test for determining whether an employer has engaged in sham contracting.

**Government response**

The Government accepts the recommendation.

**Recommendation 15**

The committee recommends the Queensland Government legislate to make wage theft a criminal offence, where the conduct is proven to be deliberate or reckless.

The Queensland Government should consider the variety of models and approaches for criminalising wage theft that were presented to the inquiry and consult further with stakeholders in regard to a preferred model.

**Government response**

The Government supports the recommendation in-principle, subject to further consideration of the constitutional jurisdiction and implementation implications.

**Recommendation 16**

The committee recommends an automatic termination date be legislated for remaining *Work Choices* 'zombie' agreements, with consideration given to necessary transitional arrangements and protections to ensure no workers are disadvantaged as a result.

**Government response**

The Government accepts the recommendation.

**Recommendation 17**

The committee recommends reform of the *Fair Work Act 2009* (Cth) to more adequately accommodate emerging forms of non-traditional employment.

This should include consideration of law reform to broaden the definition of worker and provide broader access to the benefits of collective bargaining, minimum standards for pay and conditions, and access to the Fair Work Commission.

**Government response**

The Government accepts the recommendation.