

Amendments during Consideration in Detail - Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020.

Policy objectives and the reasons for them

The amendment being introduced during consideration in detail of the Bill (ACiD) will insert a new division into the *Industrial Relations Act 2016* (IR Act) providing for the sharing of information by an employer to a registered employee organisation (REO) which has been authorised by an employee.

Achievement of policy objectives

The ACiD will achieve its objective of allowing the disclosure of information to REOs by inserting a new clause 8A into the Bill which will provide for:

- authorisation by employees for an employer to disclose their information to a REO, and
- disclosure of information by an employer to a REO, if an employee authorisation to do so is in place.

Alternative ways of achieving policy objectives

The *Information Privacy Act 2009* requires agencies (including Queensland Government agencies, boards and other bodies established to perform functions connected with government agencies, and local governments) to keep individuals' information confidential in accordance with the information privacy principles (IPPs). IPP 11 (Limits on disclosure) prohibits agencies from disclosing individuals' information unless certain conditions are met, including the individual expressly or implicitly authorising the disclosure. There is currently no systematic process in place by which employees in the state industrial jurisdiction can authorise the disclosure of their information under IPP 11 to a REO

Legislation covering the entire state jurisdiction is the clearest and most effective way to achieve the policy objective.

Estimated cost for government implementation

It is anticipated that if there is any additional cost to agencies and local councils involved in implementing the new authorisation and disclosure provisions it can be met through existing resources.

Consistency with fundamental legislative principles

The ACiD is consistent with fundamental legislative principles (FLP).

The proposed clause 8A provides for a process of information sharing between an employer and a REO only with the written authority of the employee. The provisions for authorisation and disclosure are comprehensively defined and include specific provisions for when authorisation ceases to have effect, what must be disclosed, and penalties for breach of the provisions.

The ACiD introduces a new offence to the IR Act and penalties to help ensure that a person does not wilfully deceive or mislead an employer to gain access to information about an employee so employees' right to privacy is maintained and information is not disclosed to inappropriate persons or without genuine authorisation.

Consultation

The Public Service Commission, the Office of Industrial Relations and key stakeholders were consulted.

Consistency with legislation of other jurisdictions

The ACiD is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Clause 1 inserts the new clause 8A into the Bill. Clause 8A inserts a new division 6 into chapter 9, part 1 of the IR Act, comprising new sections 354A – 354D. These provisions apply to employers and employees in the Queensland industrial relations jurisdiction (generally Queensland Government and local governments in Queensland, see IR Act sections 12 and 13), and do not apply to employers in the federal Fair Work jurisdiction.

New section 354A defines terms used in the division.

New section 354B provides that an employee may authorise their employer to disclose information to a REO. An authorisation must be made in writing, must be signed by the employee including by electronic signature, and must state the information to which the authorisation applies. The employee may provide the authorisation directly with their employer or provide to their REO for them to forward to the employer. The employer must retain the authorisation provide to them at a workplace of the employer in Queensland or in a place accessible from a workplace of the employer in Queensland. This is a civil penalty provision. An authorisation remains in effect until the earliest of the following occurs: it is withdrawn by the employee, the employee leaves their employment, or there is a break in the employee's continuity of service of three months or more.

New section 354C provides for the disclosure of information by employers. For this section to apply, an employee must have made an authorisation under section 354B, and a REO must request the employee's information. Following a request from a REO, an employer must provide the employee's information to the REO within 15 working days. If not all of the requested information is able to be disclosed, the employer must provide a statement to the REO explaining why the missing information was not disclosed. This is a civil penalty provision.

Under this section 354C(5), if an employer gives information to an employee's REO, the employer must notify the employee of this. Section 354C(6-8) also provides practically for common situations where an employee's information might be held on behalf of the department with another department, such as a shared payroll entity or when an employee is employed by more than one department.

New section 354D provides that it is an offence to attempt to wilfully deceive or mislead an employer in order to gain access to an employee's information under this division.

Clause 2 amends Schedule 3 of the IR Act to introduce civil penalties of up to a maximum of 27 penalty units for contraventions of sections 354B or 354C. Proceedings for breach of these sections may be commenced by the individual or REO affected, or by an inspector appointed under section 899 of the IR Act.

Clause 3 inserts amends clause 16 of the Bill to amend schedule 5 of the IR Act to provide that the definition of 'registered employee organisation' for chapter 9, part 1, division 6 is the definition set out in the new section 354A.