



Wage Theft Bill 2020

Bill Brief

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Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second Reading Speech can be found at the Library's Infolink [page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary Documents website](#).

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Executive summary

In Australia, the *Fair Work Act 2009* (Cth) provides the legislative framework for workplace relations. The Act requires employers to pay employees according to their statutory entitlements and makes use of a civil penalty regime to ensure the law is enforced. However, a number of high-profile cases in the last few years has drawn attention to the practice of employee underpayment or non-payment—which has been referred to as ‘wage theft’—and has started a conversation about whether or not criminal sanctions are needed.

The federal government has sought to address the issue of wage theft and in 2019 implemented a discussion paper consultation process, as well as a Senate inquiry, to do so. The government believes that there are grounds to criminalise the worst examples of wage underpayment and has begun drafting legislation to that end.

In Victoria, the Andrews Government first flagged its intention to criminalise wage theft in May 2018. This intention was reaffirmed in the government’s response to a parliamentary inquiry into penalty rates and fair pay in September of that year and was put forward as an election commitment at the 2018 State Election. The Wage Theft Bill 2020 was subsequently introduced in the Legislative Assembly in March 2020, following a community consultation process, and makes Victoria the first Australian jurisdiction to introduce legislation seeking to criminalise wage theft.

In the second reading speech, the Attorney-General stated that the existing federal civil penalty regime was not a strong enough measure to deter those who would commit wage theft. To address this lack of deterrence, the Bill proposes two main solutions: to create new wage theft offences; and to establish the Wage Inspectorate Victoria to investigate and prosecute the new offences.

Stakeholders have expressed a range of views in response to the move to criminalise wage theft, both at the state and federal level. Some have drawn attention to the terminology used, arguing that the language of ‘wage theft’ is too emotive and demonises those employers who make genuine mistakes, while others have described it as an apt description of employers not complying with the law. Duplication of the law has also been posed as a potential problem, with some questioning whether state-based legislation is needed if the issue is due to be addressed federally.

Elsewhere, debate has ensued as to whether or not criminal sanctions are required at all, with workers’ unions strongly in favour of criminalisation while several employer and industry groups argue that it’s unprecedented and unnecessary; the issues of deterrence and use of resources have also been raised.

In addition to the Commonwealth and Victoria, a number of other Australian jurisdictions have expressed their intention to address wage theft—the Queensland Government intends to make wage theft a crime and, in Western Australia, the discussion is ongoing; conversely, the governments of New South Wales and Tasmania intend to let the federal government address the issue nationally, while in South Australia, a parliamentary inquiry is currently underway.

Introduction

In May 2018, the Victorian Government committed to introduce new laws to make wage theft a criminal offence. Premier Daniel Andrews stated in a media release: ‘Employers who deliberately underpay or don’t pay their workers will face up to 10 years jail under new laws to be introduced by a re-elected Andrews Labor Government’.¹

In July 2018, a Legislative Assembly Select Committee Inquiry into penalty rates and fair pay recommended in its final report that the Victorian Government introduce legislation ‘to create a new criminal offence, with the option of a custodial sentence, for dishonestly underpaying wages or entitlements’.² In its response to the report, the Andrews Government reaffirmed its intention to make wage theft a crime and to create an Inspectorate with powers to enforce the new laws.³

The Wage Theft Bill 2020 (‘the Bill’) was subsequently introduced and read for a first time on 18 March 2020. The Bill is significant in that it seeks to shift wage underpayment from a civil to a criminal matter and demonstrates Victoria’s renewed legislative interest in labour law.

This Bill Brief provides an overview of the Wage Theft Bill 2020. First, it provides some background on the current legislative framework, looks at wage theft definitions, explains why it’s being discussed and considers the recent changes proposed by the federal government.

The Brief then looks at the Bill itself, including the Victorian Government’s consultation process leading up to the Bill’s introduction, the Attorney-General’s second reading speech and then discusses what the Bill seeks to do. Additionally, the Brief considers responses to the Bill by various stakeholder groups and concludes with a comparison of the current situation in other jurisdictions.

Please note, this Brief is not intended to provide a comprehensive analysis of the issue, nor does it cover every aspect of the Bill.

Background

What is the current legislative framework?

In Australia, the *Fair Work Act 2009* (Cth; ‘the Act’) is the principal legislation that deals with workplace relations. Section 4 of the Act explains that it:

- provides for terms and conditions of employment;
- sets out rights and responsibilities of employees, employers and organisations in relation to that employment;
- provides for compliance with, and enforcement of, the Act; and
- provides for the Act’s administration by establishing the Fair Work Commission and the Office of the Fair Work Ombudsman.⁴

¹ D. Andrews, Premier of Victoria (2018) *Dodgy employers to face jail for wage theft*, media release, 26 May.

² Penalty Rates and Fair Pay Select Committee (2018) *Inquiry into penalty rates and fair pay*, final report, Melbourne, The Committee, July, p. 46.

³ Victorian Government (2018) *Victorian Government response to the Victorian Parliamentary Select Committee Inquiry into Penalty Rates and Fair Pay*, Melbourne, Victorian Government, September, p. 4.

⁴ *Fair Work Act 2009* (Cth), s 4.

Prior to the Act's implementation, workplace laws were set and administered by most individual states.⁵ In order for employment and industrial relations to be regulated nationally, the states must refer these powers to the Commonwealth.⁶ The Fair Work Act made this possible, allowing states to refer matters to the federal government to form a national workplace relations system.⁷ In Victoria, the way in which these powers are referred is set out in the *Fair Work (Commonwealth Powers) Act 2009* (Vic).⁸

The Act introduced the Fair Work System, the national workplace relations system that provides for the minimum employment laws in Australia.⁹ According to the Fair Work Ombudsman (FWO), the key features of the Fair Work System include:

- ten minimum National Employment Standards;
- awards that apply nationally for specific industries and occupations;
- the national minimum wage; and
- protection from unfair dismissal.¹⁰

The Fair Work System covers most Australian workplaces. In Victoria, all employees are covered by the national system, with the exception of state government employees working in sectors that provide essential services for core government functions (for example, state infrastructure services such as electricity and gas).¹¹ Some state government employees are covered under registered agreements that state government employers have made in the national system.¹²

The Act requires employers to pay employees according to their statutory entitlements and prohibits employers from breaching the national employment standards, a modern award, an enterprise agreement or the national minimum wage order.¹³ To ensure this is the case, the Act makes use of a **civil** penalty regime. Compliance with the laws is regulated primarily by the FWO, which may pursue compliance and enforcement outcomes through a range of actions—including through the courts, which have a range of civil penalties available to them to promote compliance with the Act.¹⁴ The FWO's enforcement approach is documented in its *Compliance and Enforcement Policy*.¹⁵

While the Act does contain a small number of criminal offences, the Attorney-General's Department explains that these 'are limited to matters such as contempt of court, and provisions which make it an offence to give, receive or solicit a corrupting benefit (for example, a bribe)'.¹⁶

⁵ Fair Work Ombudsman (date unknown) '[Legislation](#)', Fair Work Ombudsman website.

⁶ D. Trindade et al. (2019) '[Victoria extends its Fair Work referral for public sector employees](#)', Clayton Utz website, 16 May.

⁷ Fair Work Ombudsman (date unknown) op. cit.

⁸ *Fair Work (Commonwealth Powers) Act 2009*

⁹ Fair Work Ombudsman (date unknown) '[The Fair Work System](#)', Fair Work Ombudsman website.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ K. Williams (2019) '[Australia moves to criminalise 'wage theft'](#)', *PinsentMasons*, 6 November.

¹⁴ Attorney-General's Department (2019) *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*, Canberra, Australian Government, September, p. 2.

¹⁵ Fair Work Ombudsman (2019) *Compliance and Enforcement Policy*, Canberra, Commonwealth of Australia, July.

¹⁶ Attorney-General's Department (2019) op. cit., p. 11.

What is wage theft?

Investigative journalists Adele Ferguson and Ben Schneiders, who helped to bring this issue to the nation's attention, define 'wage theft' as:

the practice of paying workers less than they are entitled to under Australia's workplace relations system. Its various forms include underpaying wages, penalty rates, superannuation, overtime, commissions and entitlements such as sick, annual or carers leave; or requiring workers to repay money earned or making unauthorised deductions from employee pay.¹⁷

Importantly, they note, wage theft is distinct from other problems that are associated with the sector—namely the gig economy, casual and insecure work, and the reduction of penalty rates—as wage theft involves *unlawful* activity.¹⁸

Governments in Australia presently use several different working definitions of wage theft. The Victorian Government defines wage theft as 'the dishonest underpayment or non-payment of employee entitlements, and includes not paying what is owed, or failing to record and accrue leave entitlements'.¹⁹ In Queensland—another jurisdiction that has looked at wage theft in recent times—the Office of Industrial Relations provides a similar definition, and states that wage theft 'can take various forms such as underpayment of wages, having entitlements such as leave and penalty rates withheld, and an employer not making required superannuation contributions on an employee's behalf'.²⁰ In Western Australia, the government has defined wage theft as 'the systematic and deliberate underpayment of wages and entitlements to a worker'.²¹

There is currently no legal definition of wage theft in Australia.²² Other terms such as 'exploitation' or 'underpayment' have been used to categorise this behaviour—for example, the federal government used 'wage theft' in a media release in September 2019,²³ while a release in February 2020 described 'deliberate worker exploitation and wage underpayments'.²⁴ In a 2017 Senate committee report into corporate avoidance of the Fair Work Act, a chapter, entitled 'wage theft', referred to 'underpayment of vulnerable workers'.²⁵

Though the federal government acknowledges that the term 'wage theft' has been used as an umbrella term to describe various kinds of underpayment, it makes a clear distinction between employers who have made genuine mistakes, and those employers who deliberately underpay, or otherwise exploit, employees.²⁶

¹⁷ A. Ferguson & B. Schneiders (2020) 'Underpayment as business model: what is wage theft?', *Sydney Morning Herald*, 18 February.

¹⁸ *ibid.*

¹⁹ Victorian Government (date unknown) 'Wage Theft', Engage Victoria website.

²⁰ Queensland Government Office of Industrial Relations (2019) 'Wage theft information for workers', Office of Industrial Relations website.

²¹ B. Johnston, Minister for Industrial Relations (2019) *Inquiry into wage theft complete*, media release, 24 July.

²² K. Williams (2019) *op. cit.*

²³ C. Porter, Attorney-General (2019) *Submissions invited on wage theft criminalisation*, media release, 19 September.

²⁴ C. Porter, Attorney-General (2020) *More options needed to prevent wage underpayments*, media release, 18 February.

²⁵ Senate Education and Employment References Committee (2017) *Corporate avoidance of the Fair Work Act 2009*, final report, Canberra, Commonwealth of Australia, p. 59.

²⁶ Attorney-General's Department (2019) *op. cit.*, p. 2.

Why are we talking about it?

Wage theft has received considerable media coverage in Australia in the last few years, following several high-profile cases.

The issue came to national prominence through a joint investigation in 2015 of the 7-Eleven franchise by ABC's *Four Corners* program and Fairfax Media, which revealed dishonest bookkeeping, blackmail and mass underpayment of the convenience stores' workforce.²⁷ Ferguson called it 'the first big corporate scandal to expose the depth of underpayment' in the country, and one which 'caused national outrage and put the issue on the agenda'.²⁸

Since the 2015 *Four Corners* investigation, numerous underpayment cases have been revealed, including at Domino's, Caltex, Bunnings, Super Retail Group, Grill'd and Spotless catering.²⁹ Some of the most recent high-profile cases include:

- **MAde Establishment** group (headed by celebrity chef, George Calombaris) that, following self-reporting and a four-year investigation by the FWO, was found to have underpaid 515 current and former employees a total of \$7.83 million;³⁰
- **Rockpool Dining Group**, which in a complaint lodged at the FWO was accused of underpaying staff at least \$10 million;³¹
- **Coles**, which revealed it had underpaid about 600 staff some \$20 million over six years;³²
- **Wesfarmers**, which reported staff underpayments totalling \$30.1 million across its companies, including a \$9 million underpayment of staff at **Target**;³³
- **Qantas**, which disclosed the underpayment of 638 employees over eight years, totalling \$7.1 million;³⁴
- **Commonwealth Bank**, which revealed staff underpayments totalling some \$53 million, affecting 41,000 current and former staff and dating back to 2010;³⁵ and
- **Woolworths Group**, which found after an internal review that approximately 5,700 salaried staff had been underpaid between \$200–300 million over nine years,³⁶ although recent reports indicate repayments may reach up to \$400 million.³⁷

In 2018, the FWO began a nationwide audit of 1,217 businesses across hospitality, domestic construction, retail, manufacturing and administration services.³⁸ According to a FWO media release, the audit was established 'after data consistently showed many businesses were failing the 'basics' of workplace law compliance: paying staff their correct rates, providing proper payslips, and keeping proper employment records'.³⁹ The FWO reported in 2020 that the audit had recovered \$1.3 million for underpaid employees and that hospitality was found to be the least compliant industry.⁴⁰ FWO audits of sushi businesses in 2018 also found that 87 per cent were not compliant with workplace laws

²⁷ ABC News (2015) '7-Eleven: The Price of Convenience', *Four Corners*, ABC News website, 30 August.

²⁸ A. Ferguson (2020) 'Scourge of wage fraud demands action', *The Saturday Age*, 22 February.

²⁹ M. Boersma (2020) 'Wage theft: Employer calls to 'reform' award system are a bare-faced con job', *The New Daily*, 22 February; A. Ferguson (2019) 'Under the grill', *Saturday Age*, 7 December.

³⁰ (2019) 'Act now on wage rip-offs', Editorial, *Herald Sun*, 19 July.

³¹ T. Akerman (2019) 'Perry's Rockpool chain 'cheated its staff out of \$10m'', *The Australian*, 25 October.

³² D. Powell & A. Patty (2020) 'Coles admits to \$20m staff underpayment', *The Age*, 19 February.

³³ D. Powell (2020) 'Errors: Target staff underpaid \$9m', *The Age*, 20 February.

³⁴ E. Hannan (2020) 'Qantas worker underpay hit \$7.1m', *The Australian*, 14 March.

³⁵ E. Hannan (2019) 'Bank underpayment of workers hits \$53m', *Weekend Australian*, 14 December.

³⁶ Woolworths Group (2019) *Statement regarding Salaried Team Members*, media release, 30 October.

³⁷ S. Mitchell (2020) 'Woolies underpay bill blows out to \$400m', *Australian Financial Review*, 27 February.

³⁸ Fair Work Ombudsman (2020) *Audits recover \$1.3 million for underpaid workers*, media release, 11 March.

³⁹ *ibid.*

⁴⁰ *ibid.*

and that false records were common. A sushi chain was subsequently fined a record sum of \$891,000 for deliberate staff underpayment and for its attempts to conceal having done so.⁴¹

In March 2020, the FWO told a Senate Economics References Committee inquiry that there had been more than 40 self-disclosures of non-compliance made by large corporations during the twelve months prior, with numerous non-compliance cases involving hundreds or thousands of employees for periods of up to ten years.⁴²

Underpayment is not limited to the private sector. In recent years, the ABC has been forced to set aside \$23 million to address the underpayment of up to 2,500 casual staff over a six-year period,⁴³ while the Victorian Department of Justice and Department of Health and Human Services,⁴⁴ the National Gallery of Victoria,⁴⁵ and the state's public hospitals have also been questioned in relation to underpayment.⁴⁶ Organisations in the not-for-profit sector have also been implicated. In 2019, World Vision Australia admitted to underpaying around 250 staff \$8.9 million and, in 2018, the Australian Red Cross was also found to have underpaid staff \$20 million.⁴⁷ The National Tertiary Education Union has also drawn attention to employee underpayment in the tertiary education sector.⁴⁸

Researchers at the University of Technology Sydney have argued that, ultimately, wage theft has become a culturally accepted part of business, stating that:

Wage theft seems to have become accepted as a fact of life, maybe even a necessity, in certain sectors and workplaces. As a result, employers have developed a sense of impunity, while workers have become resigned to underpayment as unavoidable.⁴⁹

This sentiment is echoed in findings by researchers at the University of Queensland in their ongoing study into mental health and wellbeing in the hospitality industry. They have found that 'worker exploitation is institutionalised', that wage theft is 'rife' and that most staff 'know they are being paid less than what they are entitled to but accept it as "the norm"'.⁵⁰

What action has the federal government taken?

Given that the industrial relations framework in Australia is mostly legislated at the national level, have there been any actions taken to address wage theft? The federal government recently flagged its intention to address the issue and has commenced work on drafting legislation. In 2019, the Attorney-General's Department stated:

⁴¹ D. Marin-Guzman (2020) 'Hero Sushi fined \$900,000 for wages 'fraud'', *Australian Financial Review*, 18 May.

⁴² Fair Work Ombudsman (2020) [Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees' remuneration](#), March, Canberra, The Committee, p. 11.

⁴³ L. Vitorovich (2019) 'ABC budgets \$23m for underpaid staff', *The Australian*, 19 November.

⁴⁴ S. Jenkins (2019) 'Public sector unions lob 'wage theft' allegations at Vic government, ABC', *The Mandarin*, 21 October.

⁴⁵ N. Wakeling, Shadow Minister for Industrial Relations (2019) [More Labor hypocrisy on wage theft](#), media release, 14 October.

⁴⁶ M. Johnston (2019) 'Underpaid staff glitch', *Herald Sun*, 14 October; G. McArthur (2019) 'Docs to watch clock', *Herald Sun*, 1 August.

⁴⁷ F. Willan (2020) 'World Vision in pay error', *The Age*, 12 March.

⁴⁸ National Tertiary Education Union (2020) [Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees' remuneration](#), March, Canberra, The Committee, p. 2.

⁴⁹ S. Kane & E. Josserand (2019) 'Shocking yet not surprising: wage theft has become a culturally accepted part of business', *The Conversation*, 31 July.

⁵⁰ R. Robinson & M. Brenner (2020) 'All these celebrity restaurant wage-theft scandals point to an industry norm', *The Conversation*, 10 February.

The Government considers it unacceptable that there is a persistence of underpayment and exploitation behaviours by a small number of employers and considers there to now be a strong case that the current penalty, compliance, and enforcement framework for breaches of the *Fair Work Act 2009* (Fair Work Act), established over a decade ago now, needs to be improved.⁵¹

Discussion papers

In September 2019, federal Attorney-General, the Hon. Christian Porter released a discussion paper and invited submissions on the topic of wage theft criminalisation, explaining that ‘community feedback is being sought to help inform the development of a new offence and penalty regime, which must include significant jail terms and fines for the most serious offences’.⁵² The discussion paper, entitled *Improving protections of employees’ wages and entitlements: strengthening penalties for non-compliance*, focused on the adequacy of the existing penalty framework and considered what the introduction of criminal sanctions for the most serious forms of exploitative workplace conduct might look like.⁵³ Proposed reforms included possible ten-year jail terms or \$1.05 million fines (or both) for individuals and \$5.25 million fines for a body corporate.⁵⁴ The paper also made clear that criminal sanctions should be reserved for the most serious examples of underpayment and misconduct, and are not intended to capture employers who have made ‘genuine mistakes’.⁵⁵ The consultation period closed in October 2019 and submissions can be viewed at the Attorney-General’s Department website.⁵⁶

In February 2020, the Attorney-General flagged that legislation would be introduced in the coming weeks seeking to criminalise ‘the most serious forms of deliberate worker exploitation and wage underpayments’,⁵⁷ though this has not yet occurred. An additional discussion paper, entitled *Improving protections of employees’ wages and entitlements: further strengthening the civil compliance and enforcement framework*, was also released at that time.⁵⁸ In contrast to the first paper, which looked at the existing framework and potential criminal sanctions, the second paper sought written submissions regarding the adequacy of compliance and enforcement tools available to workplace regulators and the courts, as well as mechanisms to recover unpaid wages.⁵⁹ In terms of compliance and enforcement tools, the paper put forward a range of orders for consideration, including adverse publicity orders, banning orders and director disqualification orders.⁶⁰ For addressing unpaid wage recovery, it suggested changes to court rules and procedures, as well as to the small claims process.⁶¹ The closing date for submissions was due to be 3 April 2020; however, the consultation process is currently paused due to disruptions caused by the COVID-19 pandemic.⁶²

⁵¹ Attorney-General’s Department (2019) op. cit., p. 2.

⁵² C. Porter, Attorney-General (2019) *Submissions invited on wage theft criminalisation*, op. cit.

⁵³ Attorney-General’s Department (2019) op. cit., p. 2.

⁵⁴ *ibid.*, p. 13. (Note: under the Fair Work Act, a penalty unit has the meaning given by section 4AA of the *Crimes Act 1914* (Cth), which is currently \$210 (subject to indexation at 1 July 2020)).

⁵⁵ P. Karp (2019) ‘Wage theft: Coalition says tough new penalties won’t apply for ‘genuine mistakes’’, *The Guardian*, 19 September.

⁵⁶ Attorney-General’s Department (date unknown) ‘*Improving protections of employees’ wages and entitlements: strengthening penalties for non-compliance*’, AGD website.

⁵⁷ C. Porter, Attorney-General (2020) op. cit.

⁵⁸ Attorney-General’s Department (2020) *Improving protections of employees’ wages and entitlements: further strengthening the civil compliance and enforcement framework*, Canberra, Australian Government, 18 February.

⁵⁹ *ibid.*, p. 2.

⁶⁰ *ibid.*, pp. 10–11.

⁶¹ *ibid.*, pp. 14–16.

⁶² Attorney-General’s Department (date unknown) ‘*Improving protections of employees’ wages and entitlements: further strengthening the civil compliance and enforcement framework*’, AGD website.

Senate inquiry

On 13 November 2019, an inquiry was referred to the Senate Economics References Committee, which was tasked with looking into 'the causes, extent and effects of unlawful non-payment or underpayment of employees' remuneration by employers and measures that can be taken to address the issue'.⁶³ The Terms of Reference asked that the forms of and reasons for wage theft be considered, as well as any changes to the existing legislative framework that may deter wage theft.⁶⁴ The Committee was due to report in June 2020; however, an extension has been granted until December 2020.⁶⁵ Submissions closed on 6 March 2020 and are available at the Committee's website.⁶⁶

The Bill

The Andrews Government first flagged its intention to criminalise wage theft in May 2018 and made it an election commitment.⁶⁷

Forums

In August 2019, the Government revealed that a series of wage theft forums would be held across Victoria. Victims of wage theft were invited to come forward to share their stories and provide feedback on potential reforms.⁶⁸ The first forum took place in Northcote and the Government said it would also be consulting various employer groups and unions during the process to 'ensure the new laws are fair'.⁶⁹

Consultation paper

In February 2020, the Government released a consultation paper on its Wage Theft Bill 2020, detailing the proposed legislation and its intended purpose: to create three wage theft offences and to establish the Wage Inspectorate Victoria.⁷⁰ The consultation paper explored the proposed Bill's scope, discussed key concepts, detailed intended offences and looked at enforcement models.⁷¹

In comparison to the federal government's discussions, the Victorian consultation paper made clear that the new legislation is not aimed at those who make administrative errors or genuine mistakes; rather, it is aimed at 'criminalising behaviour that is dishonest and intended to deprive people of their entitlements'.⁷²

⁶³ Senate Economics References Committee (date unknown) '[Unlawful underpayment of employees' remuneration](#)', Parliament of Australia website.

⁶⁴ Senate Economics References Committee (date unknown) '[Terms of Reference](#)', Parliament of Australia website.

⁶⁵ Senate Economics References Committee (date unknown) '[Unlawful underpayment of employees' remuneration](#)', op. cit.

⁶⁶ Senate Economics References Committee (date unknown) '[Unlawful underpayment of employees' remuneration: Submissions](#)', Parliament of Australia website.

⁶⁷ D. Andrews, Premier of Victoria (2018) op. cit.

⁶⁸ J. Hennessy, Attorney-General (2019) [Victims to have their say on wage theft](#), media release, 26 August.

⁶⁹ *ibid.*

⁷⁰ Victorian Government (2020) [Consultation Paper: Wage Theft Bill 2020](#), Melbourne, Victorian Government, p. 4.

⁷¹ *ibid.*, p. 3.

⁷² *ibid.*, p. 2.

Community feedback on the proposed Bill was invited between 23 February and 9 March 2020.⁷³ The Victorian Government stated that it had heard from employer representatives, victims of wage theft and unions.⁷⁴

Second reading speech

The Wage Theft Bill 2020 was introduced and first read in the Legislative Assembly by the state's Attorney-General, the Hon. Jill Hennessy, on 18 March 2020. The second reading speech, given on 19 March, stated that:

This Bill will deliver on the Victorian Government's commitment to introduce criminal offences to target wage theft, to ensure that Victorian workers receive what they are lawfully entitled to—a fair day's pay for a fair day's work.⁷⁵

The Attorney-General referred to the high-profile cases in the second reading as instances where the current federal civil penalty regime was not strong enough to deter those who would commit wage theft.

Ms Hennessy argued:

This Bill sends a strong message to employers that stealing the lawful entitlements of your employees will not be tolerated and significant penalties, including jail terms, can be imposed on those who do. This Bill makes it clear that theft is theft, and that just because it was committed by an employer does not make it any less of a crime.⁷⁶

What the Bill seeks to do

The Bill's key objective is 'to hold employers who withhold employee entitlements dishonestly to account and protect vulnerable employees from exploitation'.⁷⁷ As explored through the Consultation Paper process and highlighted in the second reading speech, the Bill addresses this by introducing three new offences and establishing the Wage Inspectorate Victoria.

New criminal offences

The first offence the Bill introduces relates specifically to wage theft. Clause 6, '**Dishonest withholding of employee entitlements**', states that an employer, or an officer of the employer, must not dishonestly withhold the whole or part of an entitlement that is owed to an employee, nor allow another person to do so on the employer's behalf.⁷⁸

Two further offences relate to record keeping. The first, Clause 7, relates to the **falsification of an employee entitlement record**. It states that an employer or an officer of the employer—or another person acting on their behalf—must not falsify an employee entitlement record with a view to dishonestly obtaining a financial advantage for the employer or another person, or preventing the exposure of a financial advantage.⁷⁹ The second, Clause 8, relates to the **failure to keep an employee entitlement record**. It states that an employer or an officer of the employer—or another person acting on their behalf—must not fail to keep an employee entitlement record with a view to dishonestly

⁷³ Victorian Government (date unknown) op. cit.

⁷⁴ Victorian Government (2020) op. cit., p. 2.

⁷⁵ J. Hennessy, Attorney-General (2020) '[Second reading speech: Wage Theft Bill 2020](#)', *Debates*, Victoria, Legislative Assembly, 19 March, p. 1097.

⁷⁶ *ibid.*

⁷⁷ [Explanatory Memorandum](#), Wage Theft Bill 2020, p. 1.

⁷⁸ [Wage Theft Bill 2020](#), cl 6(1) and 6(7), pp. 9–10.

⁷⁹ *ibid.*, cl 7(1) and 7(2), pp. 11–12.

obtaining a financial advantage for the employer or another person, or preventing the exposure of a financial advantage.⁸⁰

For the three offences described above, the penalty in the case of a body corporate is 6,000 penalty units, which in FY 2019–20 is equivalent to \$991,320.⁸¹ In any other case (i.e. for individuals), the penalty is level 5 imprisonment, equivalent to a maximum of ten years.⁸² Level 5 also attracts a maximum fine of 1,200 penalty units, which is equal to \$198,264.⁸³ While the length of imprisonment for an individual (a maximum of ten years) is similar to that proposed by the federal government in its discussion paper, the fine in Victoria for an individual, totalling \$198,264 (1,200 penalty units), is considerably less than the \$1.05 million (5,000 penalty units) proposed by the federal government. So, too, is the disparity between the proposed fines for a body corporate: \$991,320 (6,000 penalty units) in Victoria, versus \$5.25 million (25,000 penalty units) federally.

Wage Inspectorate Victoria

Clause 19 of the Bill relates to the establishment of the **Wage Inspectorate Victoria** ('the Inspectorate'), while clause 20 sets out its functions. These include, among others:

- informing, educating and assisting people in relation to their rights and obligations;
- promoting, monitoring and enforcing compliance with the proposed Act and its regulations;
- investigating the commission or possible commission of employee entitlement offences and related matters; and
- bringing criminal proceedings in relation to alleged employee entitlement offences.⁸⁴

The Bill puts forward a set of guiding principles for the Inspectorate and provides for the appointment of a Commissioner.⁸⁵ It sets out how the Inspectorate may go about investigating employee entitlement offences and that inspectors can be appointed to do so,⁸⁶ while also detailing the various powers and procedures relating to entry, search and seizure.⁸⁷

Elsewhere, the Bill makes provision for the production of documents and records, the power to compel attendance at the Inspectorate, and includes enforceable undertakings.⁸⁸ The Bill also provides for general offences relating to the work of inspectors (for example, that they not be intentionally hindered or obstructed in doing their work) and the giving of false or misleading information.⁸⁹

Additionally, the Bill includes the ability for the Inspectorate to refer matters to the Office of Public Prosecutions, and for regulations to be made under the Act.⁹⁰

⁸⁰ *ibid.*, cl 8(1) and 8(2), pp. 13–14.

⁸¹ The current value of a penalty unit in Victoria is \$165.22. See: Department of Justice and Community Safety (2020) '[Penalties and values](#)', DJCS website.

⁸² [Wage Theft Bill 2020](#), cls 6–8. See also: Sentencing Advisory Council (2019) '[Maximum Penalties](#)', SAC website.

⁸³ Sentencing Advisory Council (2019) '[Fine](#)', SAC website.

⁸⁴ [Wage Theft Bill 2020](#), cl 20(1), pp. 22–23.

⁸⁵ *ibid.*, cls 22 and 25, pp. 24–25.

⁸⁶ *ibid.*, cls 32–33, pp. 29–30.

⁸⁷ *ibid.*, cls 38–47, pp. 32–39.

⁸⁸ *ibid.*, cls 48–63, pp. 40–52.

⁸⁹ *ibid.*, cls 66–70, pp. 54–57.

⁹⁰ *ibid.*, cls 71, 79, pp. 57, 62.

Responses to the Bill

Submissions to the Victorian Government’s Wage Theft Bill consultation process were not publicly available at the time of writing.⁹¹ However, a number of submissions relating to this topic have been made elsewhere by various stakeholders—either in response to the federal government consultation or to other inquiries, and/or have been explored in the media. These submissions are useful in painting a picture of the range of viewpoints that arise from this issue. A selection of these are outlined by theme, below.

Terminology

Australian Industry Group (AIG) chief executive, Innes Willox, disagreed with the nature of the language used in the debate. In response to the discussion papers released by the federal Attorney-General’s Department, Willox stated, ‘Anti-business rhetoric has reached fever pitch, risking jobs and investment’, and that ‘federal and state governments were supporting a divisive agenda by parroting overly emotive union terms such as ‘wage theft’’.⁹² Similarly, in its submission to a Queensland inquiry, the AIG stated that the term wage theft was ‘inappropriate’ and that it ‘risks inappropriately branding employers who mistakenly underpay their employees as criminals’.⁹³

The Housing Industry Association also questioned use of the phrase, saying in its submission to a Queensland inquiry that the concept ‘has been greatly exaggerated by implying that all underpayment of wages is theft’.⁹⁴ The Business Council of Australia (BCA) shared this view, and regarded it as crucial that a distinction be made between intentional action/manipulation and unintentional errors.⁹⁵ The BCA pointed to award complexity, stating that ‘most non-compliance by employers is not ‘wage theft’ but the result of system errors or inadvertent mistakes, many of which are the direct result of the complexity of Australia’s workplace relations system’.⁹⁶ This opinion was shared by the Australian Retailers Association, which argued that, in the retail industry, the root cause of underpayments was award complexity rather than criminal intent.⁹⁷ The idea of award complexity has been challenged by Professor of Workplace Law, Anthony Forsyth, who argued that the system is not as complex as employers claim it to be and is not to blame for corporate wage theft.⁹⁸

However, others including Professor Allan Fels, who chaired the Migrant Workers’ Taskforce along with Deputy Chair, Professor David Cousins, have argued that the term ‘wage theft’ is appropriate in the circumstances. Fels and Cousins considered this issue as part of their investigation, and stated that:

⁹¹ Victorian Government (date unknown) op. cit.

⁹² Cited in D. Marin-Guzman (2020) ‘[New crackdown on underpayments](#)’, *Australian Financial Review*, 18 February.

⁹³ Cited in B. Smee (2018) ‘[Underpayment of workers not ‘wage theft’, employer groups tell inquiry](#)’, *The Guardian*, 16 August.

⁹⁴ B. Smee (2018) op. cit.

⁹⁵ Business Council of Australia (2020) [Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees’ remuneration](#), March, Canberra, The Committee, p. 1.

⁹⁶ Business Council of Australia (2020) op. cit., p. 1.

⁹⁷ Australian Retailers Association (2020) [Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees’ remuneration](#), March, Canberra, The Committee, p. 4.

⁹⁸ A. Forsyth (2019) ‘[No, a ‘complex’ system is not to blame for corporate wage theft](#)’, *The Conversation*, 11 November.

underpayment may be inadvertent, but the outcome is no different as to when it is deliberate. The terms wage exploitation and wage theft are more emotive, but also apt descriptions of the problem, which in essence involves employers not complying with the minimum legal entitlements of their employees.⁹⁹

Duplication

The Victorian Chamber of Commerce and Industry stated that the proposed Victorian legislation puts the state's business environment at risk due to duplication and the potential for a constitutional challenge. It argued:

The Andrews' Government proposal to introduce Victoria only penalties for failure to comply with Federal workplace relations legislation will damage Victoria's reputation as a great place to do business and risk duplicating soon to be introduced Federal laws.¹⁰⁰

This concern was also shared by two researchers at the University of Melbourne's School of Government, Professor John Howe and Melissa Kennedy. In a research paper presented at an Australian Labour Law Association conference, they warned that state laws could face a constitutional challenge due to potential inconsistency with federal laws.¹⁰¹

On the other hand, the Victorian Trades Hall Council (VTHC), in its response to the federal consultation process, did not see any particular challenge posed by duplication and instead argued that 'Commonwealth offences should be confined to strict liability, which would likely not encroach on states' wage theft laws under relevant state criminal codes'.¹⁰²

Criminality and deterrence

The United Workers Union (UWU)—whose hospitality arm and digital union, Hospo Voice,¹⁰³ has been calling for wage theft to be addressed—welcomed the Victorian Government's move to criminalise wage underpayment. Its National Secretary stated:

Employers who steal from their staff need to be held accountable and our union welcomes today's new proposed laws that will apply to wages, allowances, superannuation and other entitlements such as leave. This is a good win for all the union members who have campaigned against wage theft becoming the 'new normal'.¹⁰⁴

The Australian Council of Trade Unions (ACTU), in its submission to the federal government's discussion paper, also supported criminalising wage underpayment and suggested that employers should face up to five years' jail, or fines of up to \$10 million (\$2 million for an individual), for the deliberate underpayment of workers.¹⁰⁵ The ACTU favours a strict liability offence, though it has also

⁹⁹ A. Fels & D. Cousins (2019) *Report of the Migrant Workers' Taskforce*, Canberra, Commonwealth of Australia, March, p. 5.

¹⁰⁰ Victorian Chamber of Commerce and Industry (2020) *Wage Theft Laws put Victorian business environment at risk*, media release, 18 March.

¹⁰¹ The University of Melbourne (2019) *Criminalisation of wage theft likely to backfire, according to experts*, media release, 14 January.

¹⁰² Victorian Trades Hall Council (2019) *Submission to the industrial relations consultation, Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*, Carlton, VTHC, p. 7.

¹⁰³ See, for example: D. Schout & M. Hill (2019) 'Hospitality wage theft in the city', *CBD News*, February; A. McMillan (2018) 'Hospitality workers get online tool', *Ballarat Courier*, 5 May.

¹⁰⁴ United Workers Union (2020) *United Workers Union welcomes the country's first wage theft laws*, media release, 18 March.

¹⁰⁵ D. Marin-Guzman (2019) 'Unions push for five years' jail for wage theft', *Australian Financial Review*, 28 October.

asked whether a secondary offence with a far higher penalty (for example, \$10 million) may be required for ‘conduct that is intentional, reckless or dishonest’.¹⁰⁶

However, the Australian Chamber of Commerce and Industry has warned that the criminalisation of breaches of workplace law would set a ‘disastrous precedent’, whereby criminality could equally apply to workers and unions.¹⁰⁷ This view is shared by the AIG, which stated that if underpayments were criminalised, this ‘would represent a major unnecessary and unwarranted change to the industrial relations system’.¹⁰⁸

The National Retail Association, a union of employers in the retail, fast food and quick service industries, stated in its submission to the federal consultation that criminal sanctions should not be inserted into the Fair Work Act, unless those sanctions related only to ‘the most egregious forms of deliberate and knowing non-compliance by employers’.¹⁰⁹ Similarly, the Law Council of Australia (LCA), in its response to the federal discussion paper, advised that criminal sanctions may be suitable in very serious cases, namely where contraventions are repetitive or systematic and the person is aware of it; the LCA also agreed that criminal sanctions could be a valid means of deterrence.¹¹⁰ However, it argued that introducing criminal sanctions should not be viewed as the sole way in which underpayment can be addressed, as sanctions alone would not help to alter the vast majority of instances of underpayment.¹¹¹ This view was shared by legal scholar, Tess Hardy, who maintained that harsher civil or criminal penalties would not, on their own, lead to greater compliance.¹¹²

The VTHC expressed the view that any government response to wage theft must seek to deter the behaviour and highlighted that whatever model the government adopted should be easy for workers to access.¹¹³

Use of resources

While Howe and Kennedy agreed that criminal liability has ‘great appeal’, civil penalties were seen to be more practical: Kennedy explained, ‘the deterrent effects of criminalisation are unlikely to be anywhere near as effective as suggested due to difficulties associated with obtaining convictions and the limited resources that are available to bring prosecutions’.¹¹⁴

Elsewhere, the ACTU has drawn attention to the limited resources that the FWO has at hand to address wage theft, stating that ‘there are around 200 FWO inspectors charged with enforcing our workplace laws for more than 12 million workers’.¹¹⁵ It has subsequently voiced its support for the

¹⁰⁶ Australian Council of Trade Unions (2020) [Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees’ remuneration](#), March, Canberra, The Committee, p. 66.

¹⁰⁷ D. Marin-Guzman (2019) op. cit.

¹⁰⁸ B. Smee (2018) op. cit.

¹⁰⁹ National Retail Association (2019) [Submission to the industrial relations consultation, Improving protections of employees’ wages and entitlements: strengthening penalties for non-compliance](#), Spring Hill, NRA, p. 2.

¹¹⁰ Law Council of Australia (2019) [Submission to the industrial relations consultation, Improving protections of employees’ wages and entitlements: strengthening penalties for non-compliance](#), Braddon, LCA, p. 14.

¹¹¹ *ibid.*

¹¹² T. Hardy (2020) ‘Criminal penalties for corporate wage theft are appealing, but won’t fix the problem on their own’, *The Conversation*, 20 February.

¹¹³ Victorian Trades Hall Council (2019) op. cit., p. 1.

¹¹⁴ Cited in A. Patty (2019) ‘Criminalisation of wage theft likely to backfire, say experts’, *The Age*, 3 January.

¹¹⁵ Australian Council of Trade Unions (2018) [FWO report barely scratches the surface of wage theft](#), media release, 8 November.

creation of a small claims jurisdiction to sit alongside the Fair Work Commission in order to ‘provide simple, low-cost, plain language access to justice for workers who have their wages stolen’.¹¹⁶

The Migrant Workers Centre, which has highlighted that migrant workers disproportionately experience wage theft,¹¹⁷ instead suggested that a wage theft inspectorate be established and given the power to inspect businesses’ employment and payment records, investigate any potential wage theft and press charges.¹¹⁸ The VTHC, on the other hand, asked that the funding and powers of the FWO be increased,¹¹⁹ while the UWU has argued that the ‘most sustainable solution’ to address wage theft lies in unions being empowered to investigate, prevent and prosecute.¹²⁰

Other jurisdictions

A number of other Australian jurisdictions have considered the issue of wage theft in recent times. Some of these are discussed below.

Commonwealth

As mentioned earlier, the federal government has investigated the issue of underpayment of wages, through its discussion papers consultation process and through its Senate inquiry.

The issue was also touched upon by the Senate Education and Employment References Committee. In 2017, the Committee looked into corporate avoidance of the *Fair Work Act 2009* (Cth) and found that ‘underpayment of wages is a far bigger problem than isolated non-compliance or inadvertent oversight. In some sectors, such as the hospitality industry and jobs involving workers on temporary visas, wage theft is rampant’.¹²¹ Then, in November 2018, in its report into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies, the Committee recommended that the government ‘take immediate steps to protect vulnerable workers subject to wage theft and exploitation by companies who continue to operate with impunity’.¹²²

Elsewhere, the Migrant Workers Taskforce, established in 2016 by the government, looked into a range of issues affecting migrant workers, including underpayment. The final report, published in March 2019, recommended that criminal sanctions be introduced to address wage theft, for ‘the most serious forms of exploitative conduct, such as where that conduct is clear, deliberate and systemic’.¹²³

In response to the Taskforce’s report, the government stated that it had started drafting legislation to criminalise the underpayment of employees, detailing that:

¹¹⁶ Australian Council of Trade Unions (2019) [ACTU welcomes ALP action on wage theft](#), media release, 15 May.

¹¹⁷ Migrant Workers Centre (2020) [Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees’ remuneration](#), March, Canberra, The Committee, p. 3.

¹¹⁸ Migrant Workers Centre (2019) [Submission to the industrial relations consultation, Improving protections of employees’ wages and entitlements: strengthening penalties for non-compliance](#), Carlton, MWC, p. 7.

¹¹⁹ Victorian Trades Hall Council (2019) op. cit., p. 8.

¹²⁰ United Workers Union (2020) [We can stamp out wage theft: workers present solutions to the Senate today](#), media release, 5 March.

¹²¹ Senate Education and Employment References Committee (2017) op. cit., p. 69.

¹²² Education and Employment References Committee (2018) [Wage theft? What wage theft?! The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies](#), final report, Canberra, The Committee, November, p. vii.

¹²³ A. Fels & D. Cousins (2019) op. cit., p. 10.

Adding criminal penalties to the suite of penalties available will provide regulators and the courts with the appropriate tools to address serious contraventions of the Fair Work Act. It sends a strong and unambiguous message to employers that they cannot get away with exploiting vulnerable employees, including by underpaying wages and other entitlements.¹²⁴

Additionally, the federal government has also committed further funding to the FWO, including \$10.8 million for investigations relating to underpayments and for action to deter non-compliance.¹²⁵

New South Wales

In its submission to the federal government's discussion paper consultation process, the New South Wales Government stated that it 'supports the addition of criminal sanctions to provide regulators and the courts with the appropriate tools to address the most serious contraventions of the Fair Work Act'.¹²⁶

Based on this reading, the NSW Government does not intend to introduce legislation itself to criminalise wage theft. The government does make clear that it supports the types of sanctions outlined in the federal discussion paper, but argues that they should only apply to 'the most serious and culpable forms of workplace misconduct' and not to employers who have made genuine mistakes.¹²⁷

Queensland

In May 2017, Queensland's Legislative Assembly referred an inquiry into wage theft to its Education, Employment and Small Business Committee.¹²⁸ The Committee tabled its final report in November 2018 and made a number of recommendations, including that the Queensland Government 'legislate to make wage theft a criminal offence, where the conduct is proven to be deliberate or reckless'.¹²⁹

The Queensland Government tabled its response to the inquiry in February 2019 and supported the Committee's recommendation regarding criminalising wage theft in-principle and 'subject to further consideration of the constitutional jurisdiction and implementation implications'.¹³⁰ The Minister for Industrial Relations stated that the government had accepted, or accepted in-principle, all of the Committee's 17 recommendations and that it was doing 'everything it could do at a state level' to address wage theft; it also urged the federal government to take action.¹³¹

In March 2020, a joint media release from the state's Attorney-General and the Minister for Industrial Relations confirmed that the Queensland Government would be introducing legislation to make wage

¹²⁴ Attorney-General's Department (2020) [Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees' remuneration](#), March, Canberra, The Committee, p. 13.

¹²⁵ *ibid.*

¹²⁶ New South Wales Government (2019) [Submission to the industrial relations consultation, Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance](#), Sydney, NSW Government, p. 1.

¹²⁷ *ibid.*

¹²⁸ Queensland Parliament (date unknown) ['Report No. 9, 56th Parliament - Inquiry into wage theft in Queensland'](#), Queensland Parliament website.

¹²⁹ Education, Employment and Small Business Committee (2018) [A fair day's pay for a fair day's work? Exposing the true cost of wage theft in Queensland](#), final report, Brisbane, The Committee, p. 175.

¹³⁰ Queensland Government (2019) [Response to the Parliamentary Inquiry into wage theft in Queensland](#), Brisbane, Queensland Government, February, p. 4.

¹³¹ G. Grace, Minister for Industrial Relations (2019) [Government supports making wage theft a criminal offence](#), media release, 15 February.

theft a criminal offence.¹³² The legislation, which was due to be introduced in April 2020 but has not yet appeared, would see employers who commit wage theft liable to a maximum term of imprisonment of ten years for stealing, or 14 years for fraud.¹³³

South Australia

In October 2018, a Select Committee on Wage Theft in South Australia was appointed in the Legislative Council. The Committee's role is to inquire into and report on wage theft in South Australia, with particular reference to: the prevalence and incidence of wage theft in the state, including its impact on the community; the forms it can take, why it is occurring and where it is prevalent; and the effectiveness of the current regulatory framework in the state and federally to address it.¹³⁴

The Committee's status at the Parliament of South Australia website states that it is currently calling for submissions.¹³⁵

Tasmania

The Tasmanian Government supports moves to address wage theft; however, it has stated it intends to let the federal government continue to deal with the issue. Tasmanian Attorney-General, Elise Archer, stated that the government 'supports the federal government's intention to bring legislation to the parliament to criminalise the exploitation of workers ... particularly in respect of the underpayment of staff wages'.¹³⁶

The Shadow Minister for Workplace Relations has indicated that the state's Labor party will seek to establish a Parliamentary Inquiry in 2020 into wage theft and insecure work. The Shadow Minister stated, 'There is a need for new wage theft laws to combat systematic, widespread or blatant under and non-payment of wages and other employment benefits'.¹³⁷

Western Australia

In January 2019, the state's Minister for Industrial Relations announced an Inquiry into wage theft, to be undertaken by the former Chief Commissioner of the Western Australian Industrial Relations Commission, Tony Beech.¹³⁸ The Inquiry had nine Terms of Reference, covering both the state and national industrial relations systems. It considered whether the current regulatory framework is effective in combating wage theft and if new laws should be introduced in the state to address wage theft—and whether or not it should be criminalised.¹³⁹ The final report was completed in June 2019

¹³² Y. D'Ath, Attorney-General, & G. Grace, Minister for Industrial Relations (2020) *Wage theft. It's a crime*, media release, 6 March.

¹³³ L. Lynch (2020) 'Qld bosses who underpay staff face 14 years' jail under proposed laws', *Brisbane Times*, 6 March.

¹³⁴ Parliament of South Australia (date unknown) 'Wage Theft in South Australia', Parliament of South Australia website.

¹³⁵ *ibid.*

¹³⁶ Cited in M. Maloney (2020) 'Tasmanian Labor calls for state inquiry into wage theft', *The Examiner*, 19 February.

¹³⁷ M. O'Byrne, Shadow Minister for Workplace Relations (2020) *Wage theft hurting Tasmanian workers*, media release, 19 February.

¹³⁸ Government of Western Australia (2019) 'Inquiry into Wage Theft in Western Australia', Government of Western Australia website.

¹³⁹ Government of Western Australia (2020) *Submission to the Senate Economics References Committee, Inquiry into the unlawful underpayment of employees' remuneration*, March, Canberra, The Committee, pp. 1–2.

and in July, the Minister stated that he would review the inquiry report and provide comment in due course.¹⁴⁰

The report was released publicly by the state government, in December 2019.¹⁴¹ Its author, Mr Beech, declared that the inquiry had revealed ‘underpayment, and systematic and deliberate underpayment, of wages and entitlements occurring particularly in some industry sectors in WA’.¹⁴² One of the report’s recommendations was that, in principle, the state government should consider a criminal sanction for the most serious cases of ‘systematic and deliberate underpayment of wages and entitlements’.¹⁴³ The report’s author made clear that he believed the unintentional underpayment of wages and entitlements, however, should not attract a criminal sanction.¹⁴⁴

The state government tabled its response to the Inquiry on 10 December 2019 and stated that it intended to take action to address wage theft in Western Australia.¹⁴⁵ In a media release, the Minister for Industrial Relations acknowledged the 28 recommendations made in the inquiry report and said that the government would be ‘giving further consideration as to whether wage theft should be criminalised’ following consultation with the Commonwealth.¹⁴⁶

¹⁴⁰ B. Johnston, Minister for Industrial Relations (2019) op. cit.

¹⁴¹ Government of Western Australia (2019) op. cit.

¹⁴² T. Beech (2019) *Inquiry into Wage Theft in Western Australia*, final report, Perth, Government of Western Australia, p. 7.

¹⁴³ *ibid.*, p. 12.

¹⁴⁴ *ibid.*

¹⁴⁵ Government of Western Australia (2019) *Government response to the Inquiry into Wage Theft in Western Australia*, Perth, Government of Western Australia, p. 1.

¹⁴⁶ B. Johnston, Minister for Industrial Relations (2019) *McGowan Government announces actions to combat wage theft*, media release, 6 December.

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