

# QUEENSLAND CRIMINALISES WAGE THEFT

On the 9th of September, the Queensland Parliament passed the *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* (Wage Theft Act), criminalising wage theft

The Wage Theft Act amends the Queensland Criminal Code (Code) and other legislation. The Code was amended on the 14th of September 2020.

Now employers who commit wage theft may face criminal prosecution and a penalty of imprisonment.

## What is wage theft?

Generally, a person will commit the crime of 'stealing' if they fail to pay an employee (or a 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.

This may include wage theft through, for example, underpayment of wages for hours worked, unauthorised deductions, unpaid superannuation, withholding entitlements and underpayment through intentionally misclassifying workers under an award or by a sham contract.

The Office of Industrial Relations has stated that the amendments to the Code are intended to "capture deliberate, intentional behaviour leading to under or non-payment of entitlements as a criminal offence" and not honest mistakes.

However, judicial consideration is required to understand the scope of wage theft claims.

## Who investigates the crime?

Queensland Police has been given jurisdiction to investigate claims of wage theft.

Workers can make a complaint to the Queensland Police who will consider the information provided in the complaint when deciding whether to investigate whether a crime of wage theft has been committed and initiate prosecution.

However, the Queensland Police do not pursue and recover unpaid wages.

## What is the maximum penalty?

The Wage Theft Act amends the Code to add the following punishment for wage theft from 14 September 2020:

### **Stealing by employers**

*If the offender is or was an employer and the thing stolen is the property of a person who is or was the offender's employee, the offender is liable to **imprisonment for 10 years**.*

Further the Wage Theft Act amends the definition of fraud in the Code to include when the offender is or was an employer of the victim.

The maximum penalty for employers who defraud their employees is 14 years of imprisonment.



An individual employer or a corporation may be charged with wage theft. While both individuals and corporations may face financial penalties, the penalty of imprisonment will apply to individuals. Where the employer is a corporation, it is important to note that other persons (e.g. a director or company officer) may be found liable if they aid, counsel or procure the employer to commit wage theft.

## What about other states and territories?

Victoria and the ACT have already criminalised wage theft and Western Australia has introduced a bill to address wage theft.

## What do employers need to do?

Employers must ensure that they are paying their employees in accordance with their legal obligations.

If any underpayment is identified, employers should rectify promptly.

*This article is intended for information purposes only and should not be regarded as legal advice. Please contact Employer Assist for tailored advice.*

### **AAAA Member Benefits**

Employer Assist can assist members with advice on their obligations to classify and pay minimum entitlements under applicable awards, agreements, and the Fair Work Act.

If you require assistance, we encourage you to contact Employer Assist on 1300 735 306 or [aaaa@employerassist.com.au](mailto:aaaa@employerassist.com.au)

