



Queensland

Criminal Code and Other Legislation (Wage Theft) Amendment Bill 2020



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2020

A Bill

for

An Act to amend the Criminal Code, the Industrial Relations Act 2016, the Magistrates Courts Act 1921 and the Queensland Civil and Administrative Tribunal Act 2009 for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020*. 4
5

Clause 2 Commencement 6

Parts 3 to 5 commence on a day to be fixed by proclamation. 7

Part 2 Amendment of Criminal Code 8

Clause 3 Code amended 9

This part amends the Criminal Code. 10

Clause 4 Amendment of s 391 (Definition of *stealing*) 11

(1) Section 391(2AA)— 12

omit. 13

(2) Section 391— 14

insert— 15

(6A) For stealing that is a failure to pay an employee, 16
or another person on behalf of the employee, an 17
amount payable to the employee or other person 18
in relation to the performance of work by the 19
employee— 20

(a) the amount is a thing that is capable of being 21
stolen; and 22

(b) subsection (6) does not apply; and	1
(c) the amount is converted to the person's own use when—	2 3
(i) the amount becomes, under an Act, industrial instrument or agreement, payable to the employee or to the other person on behalf of the employee; and	4 5 6 7
(ii) the amount is not paid.	8
(3) Section 391(7)—	9
<i>insert—</i>	10
<i>Act</i> includes an Act of another State or the Commonwealth.	11 12
<i>industrial instrument</i> means—	13
(a) an industrial instrument under the <i>Industrial Relations Act 2016</i> , schedule 5; or	14 15
(b) a fair work instrument under the <i>Fair Work Act 2009</i> (Cwlth).	16 17
<i>special property</i> , in a thing, includes—	18
(a) a charge or lien on the thing; and	19
(b) a right arising from or dependent on holding possession of the thing, whether by the person entitled to the right or by another person for the other person's benefit; and	20 21 22 23
(c) a right of an employee, in relation to the performance of work by the employee—	24 25
(i) to be paid the thing; or	26
(ii) to have the thing paid to another person on behalf of the employee.	27 28
Clause 5 Amendment of s 398 (Punishment of stealing)	29
Section 398, punishment in special cases—	30

[s 6]

insert—

1

16 Stealing by employers

2

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.

3

4

5

6

Clause 6 Amendment of s 408C (Fraud)

7

Section 408C(2)—

8

insert—

9

(e) the offender is or was an employer of the
victim.

10

11

Part 3

**Amendment of Industrial
Relations Act 2016**

12

13

Clause 7 Act amended

14

This part amends the *Industrial Relations Act 2016*.

15

**Clause 8 Amendment of s 13 (Who this Act applies to—particular
provisions)**

16

17

Section 13—

18

insert—

19

(2) Provisions of chapter 11, part 3, division 4 about
civil remedies under the *Fair Work Act 2009*
(Cwlth), chapter 4, part 4-1 apply to employers
and employees who are generally covered by that
Act.

20

21

22

23

24

Clause 9 Insertion of new ch 11, pt 3, div 4

25

Chapter 11, part 3—

26

<i>insert—</i>	1
Division 4 Fair work claims	2
Subdivision 1 Preliminary	3
507A Purpose of division	4
The purpose of this division is to provide for the timely, inexpensive and informal resolution of fair work claims in an Industrial Magistrates Court.	5 6 7 8
<i>Notes—</i>	9
1 See the <i>Fair Work Act 2009</i> (Cwlth), section 539 for the conferral of jurisdiction on eligible State or Territory courts in relation to the contravention of civil remedy provisions under that Act.	10 11 12 13
2 See also the <i>Fair Work Act 2009</i> (Cwlth), chapter 4, part 4-1 and the <i>Judiciary Act 1903</i> (Cwlth), section 79 for the practice and procedure of an Industrial Magistrates Court when exercising jurisdiction under the <i>Fair Work Act 2009</i> (Cwlth).	14 15 16 17 18
507B Definitions for division	19
In this division—	20
<i>civil remedy provision</i> see the <i>Fair Work Act 2009</i> (Cwlth), section 539(1) and (3).	21 22
<i>fair work claim</i> means a claim in relation to a civil remedy provision.	23 24
Subdivision 2 Conciliation	25
507C Conciliation	26
(1) This section applies if a person has started a proceeding for a fair work claim in an Industrial	27 28

[s 9]

- | | |
|---|----------------------|
| Magistrates Court. | 1 |
| (2) The registrar may refer the fair work claim to conciliation. | 2
3 |
| (3) The referral of the fair work claim to conciliation— | 4
5 |
| (a) must be done as soon as practicable after the proceeding for the claim is started; and | 6
7 |
| (b) must be done before the Industrial Magistrates Court hears the claim; and | 8
9 |
| (c) should preferably be done before a party to the claim files a defence to the claim. | 10
11 |
| (4) If the registrar refers the fair work claim to conciliation and a party does not wish to participate in conciliation, the party must notify the registrar of that fact— | 12
13
14
15 |
| (a) as soon as practicable; and | 16 |
| (b) before a conciliation conference starts. | 17 |
| (5) If the registrar is notified under subsection (4)— | 18 |
| (a) the conciliation must not proceed; and | 19 |
| (b) the registrar must— | 20 |
| (i) notify the Industrial Magistrates Court that the conciliation is not proceeding and the reason it is not proceeding; and | 21
22
23 |
| (ii) refer the matter for hearing by the Industrial Magistrates Court. | 24
25 |
| (6) The purposes of conciliation are to— | 26 |
| (a) enable the parties to reach agreement on as many matters as possible; and | 27
28 |
| (b) reduce the scope of the matters at issue between the parties; and | 29
30 |

(c) achieve a timely, cost-effective, proportionate and agreed resolution of the fair work claim if possible. 1
2
3

(7) The conciliator appointed for the fair work claim must start conciliating the claim as soon as practicable after being appointed. 4
5
6

507D Conciliators for fair work claims 7

Each commissioner is a conciliator for fair work claims. 8
9

507E Procedure for conciliation process 10

(1) For a conciliation process, the conciliator— 11
(a) must decide the procedure to be used; and 12
(b) may adopt any procedure that will, in the conciliator’s opinion, enable the conciliator to perform the conciliator’s functions. 13
14
15

Example of a procedure that may be used— 16
a conciliation conference 17

(2) The registrar may, at any time of the registrar’s own initiative or on the application of a party or the conciliator, give directions about the procedure to be used for a conciliation process. 18
19
20
21

507F Conciliator to file certificate 22

(1) As soon as practicable after a conciliation process is finished, the conciliator must file with the registrar a certificate about the conciliation process in the form required under the rules. 23
24
25
26

(2) For subsection (1), the conciliation process is finished if— 27
28

(a) the parties agree on a resolution of all or part of the fair work claim; or 29
30

[s 9]

(b) the conciliator decides the conciliation process is finished.	1 2
507G Conciliation agreements	3
(1) This section applies if, in a conciliation process, the parties agree on a resolution of all or part of the fair work claim.	4 5 6
(2) The agreement must be written down and signed by or for each party.	7 8
507H Orders giving effect to conciliation agreements	9 10
(1) A party may apply to the Industrial Magistrates Court for an order giving effect to an agreement reached in a conciliation process.	11 12 13
(2) However, a party may apply for the order only after the conciliator's certificate about the conciliation process is filed with the registrar.	14 15 16
(3) The Industrial Magistrates Court may make any order giving effect to an agreement reached in a conciliation process the court considers appropriate in the circumstances.	17 18 19 20
507I Admission made in conciliation process	21
(1) Evidence of anything done or said, or an admission made, during the conciliation process for a fair work claim is admissible at the hearing of the claim or in another civil proceeding or elsewhere only if all the parties agree.	22 23 24 25 26
(2) In this section— <i>civil proceeding</i> does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.	27 28 29 30 31

Subdivision 3	Other provision	1
507J	Fair work small claim—representation	2
(1)	A party to a fair work small claim may be represented in an Industrial Magistrates Court by an official of an industrial association.	3 4 5
(2)	In this section—	6
	<i>fair work small claim</i> means a fair work claim that may be dealt with under the small claims procedure mentioned in the <i>Fair Work Act 2009</i> (Cwlth), section 548.	7 8 9 10
	<i>industrial association</i> see the <i>Fair Work Act 2009</i> (Cwlth), section 12.	11 12
	<i>official</i> , of an industrial association, see the <i>Fair Work Act 2009</i> (Cwlth), section 12.	13 14
	<i>Note—</i>	15
	See also the <i>Fair Work Act 2009</i> (Cwlth), section 548(8) and <i>Fair Work Regulations 2009</i> (Cwlth), regulation 4.01(4).	16 17 18
Clause 10	Amendment of s 511 (Functions of the registry)	19
	Section 511(a) and (b), ‘and commission’—	20
	<i>omit, insert—</i>	21
	, each Industrial Magistrates Court in relation to fair work claims under part 3, division 4 and the commission	22 23 24
Clause 11	Amendment of s 529 (Representation of parties generally)	25 26
	Section 529(2), definition <i>proceedings—</i>	27
	<i>omit, insert—</i>	28
	<i>proceedings—</i>	29

[s 12]

	(a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and	1 2 3 4
	(b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.	5 6 7
Clause 12	Amendment of s 530 (Legal representation)	8
(1)	Section 530(1)(e)(ii)— <i>omit, insert—</i>	9 10
	(ii) both of the following apply—	11
	(A) the proceedings relate to a matter that could have been brought before a court of competent jurisdiction other than an Industrial Magistrates Court; and	12 13 14 15 16
	(B) an Industrial Magistrates Court gives leave; or	17 18
(2)	Section 530(1)— <i>insert—</i>	19 20
	(g) for proceedings before a conciliator—the conciliator gives leave.	21 22
(3)	Section 530(7), definition <i>proceedings</i> — <i>omit, insert—</i> <i>proceedings</i>—	23 24 25
	(a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and	26 27 28 29
	(b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.	30 31 32

Clause 13	Amendment of s 531 (Decisions of the commission and magistrates)	1 2
(1)	Section 531(1)(a), ‘an amount ordered under section 405 or 475’—	3 4
	<i>omit, insert—</i>	5
	a relevant amount	6
(2)	Section 531—	7
	<i>insert—</i>	8
	(6) In this section—	9
	<i>relevant amount</i> means—	10
	(a) an amount of not more than \$50,000 ordered under section 379, 386 or 396; or	11 12
	(b) an amount ordered under section 405 or 475.	13 14
Clause 14	Insertion of new ch 11, pt 5, div 5A	15
	Chapter 11, part 5—	16
	<i>insert—</i>	17
	Division 5A Conciliation of unpaid amount claims	18 19
	547A Purpose of division	20
	The purpose of this division is to provide for the timely, inexpensive and informal resolution of unpaid amount claims in the commission or an Industrial Magistrates Court.	21 22 23 24
	547B Definitions for division	25
	In this division—	26
	<i>industrial tribunal</i> , for an unpaid amount claim,	27

[s 14]

- means— 1
- (a) for a claim started by an application to a 2
magistrate—the magistrate; or 3
- (b) for a claim started by an application to the 4
commission—the commission. 5
- unpaid amount claim*** means a claim that may be 6
made by application under section 379, 386, 396 7
or 476. 8

547C Conciliation 9

- (1) This section applies if a person has started a 10
proceeding for an unpaid amount claim. 11
- (2) The registrar may refer the unpaid amount claim 12
to conciliation. 13
- (3) The referral of the unpaid amount claim— 14
- (a) must be done as soon as practicable after the 15
proceeding for the claim has started; and 16
- (b) must be done before the industrial tribunal 17
for the claim hears it; and 18
- (c) should preferably be done before a party to 19
the claim files a defence to the claim. 20
- (4) If the registrar refers the unpaid amount claim to 21
conciliation and a party does not wish to 22
participate in conciliation, the party must notify 23
the registrar of that fact— 24
- (a) as soon as practicable; and 25
- (b) before a conciliation conference starts. 26
- (5) If the registrar is notified under subsection (4)— 27
- (a) the conciliation must not proceed; and 28
- (b) the registrar must— 29
- (i) notify the industrial tribunal for the 30
unpaid amount claim that the 31

conciliation is not proceeding and the reason it is not proceeding; and	1 2
(ii) refer the matter for hearing by the industrial tribunal.	3 4
(6) The purposes of conciliation are to—	5
(a) enable the parties to reach agreement on as many matters as possible; and	6 7
(b) reduce the scope of the matters at issue between the parties; and	8 9
(c) achieve a timely, cost-effective, proportionate and agreed resolution of the unpaid amount claim if possible.	10 11 12
(7) The conciliator appointed for the unpaid amount claim must start conciliating the claim as soon as practicable after being appointed.	13 14 15
547D Conciliators for unpaid amount claims	16
Each commissioner is a conciliator for unpaid amount claims.	17 18
547E Procedure for conciliation process	19
(1) For a conciliation process, the conciliator—	20
(a) must decide the procedure to be used; and	21
(b) may adopt any procedure that will, in the conciliator’s opinion, enable the conciliator to perform the conciliator’s functions.	22 23 24
<i>Example of a procedure that may be used—</i>	25
a conciliation conference	26
(2) The registrar may, at any time of the registrar’s own initiative or on the application of a party or the conciliator, give directions about the procedure to be used for the conciliation process.	27 28 29 30

[s 14]

547F Conciliator to file certificate	1
(1) As soon as practicable after a conciliation process is finished, the conciliator must file with the registrar a certificate about the conciliation process in the form required under the rules.	2 3 4 5
(2) For subsection (1), the conciliation process is finished if—	6 7
(a) the parties agree on a resolution of all or part of the unpaid amount claim; or	8 9
(b) the conciliator decides the conciliation process is finished.	10 11
547G Conciliation agreements	12
(1) This section applies if, in a conciliation process, the parties agree on a resolution of all or part of the unpaid amount claim.	13 14 15
(2) The agreement must be written down and signed by or for each party.	16 17
547H Orders giving effect to conciliation agreements	18 19
(1) A party to an unpaid amount claim may apply to the industrial tribunal for the claim for an order giving effect to an agreement reached in a conciliation process.	20 21 22 23
(2) However, a party may apply for the order only after the conciliator's certificate about the conciliation process is filed with the registrar.	24 25 26
(3) The industrial tribunal may make any order giving effect to an agreement reached in a conciliation process the industrial tribunal considers appropriate in the circumstances.	27 28 29 30

547I Admission made in conciliation process	1
(1) Evidence of anything done or said, or an admission made, during the conciliation process for an unpaid amount claim is admissible at the hearing of the claim or in another civil proceeding or elsewhere only if all the parties agree.	2 3 4 5 6
(2) In this section—	7
<i>civil proceeding</i> does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.	8 9 10 11

Clause 15	Insertion of new ch 18, pt 5	12	
	Chapter 18—	13	
	<i>insert</i> —	14	
	Part 5	Transitional provisions for Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020	15 16 17 18 19
	1091 Application of provisions about fair work claims	20 21	
	Chapter 11, part 3, division 4 only applies to a proceeding for a fair work claim that is started after the commencement.	22 23 24	
	1092 Application of provisions about conciliation of unpaid amount claims	25 26	
	Chapter 11, part 5, division 5A only applies to a proceeding for an unpaid amount claim that is started after the commencement.	27 28 29	

[s 16]

Clause 16	Amendment of sch 5 (Dictionary)	1
	Schedule 5—	2
	<i>insert</i> —	3
	<i>civil remedy provision</i> , for chapter 11, part 3, division 4, see section 507B.	4 5
	<i>fair work claim</i> see section 507B.	6
	<i>industrial tribunal</i> , for chapter 11, part 5, division 5A, for an unpaid amount claim, see section 547B.	7 8 9
	<i>unpaid amount claim</i> see section 547B.	10
Part 4	Amendment of Magistrates Courts Act 1921	11 12
Clause 17	Act amended	13
	This part amends the <i>Magistrates Courts Act 1921</i> .	14
Clause 18	Amendment of s 42B (Application of pt 5A)	15
	Section 42B(3) and (4)—	16
	<i>omit, insert</i> —	17
	(3) A claim under the <i>Fair Work Act 2009</i> (Cwlth), section 539 is not an employment claim.	18 19
Clause 19	Insertion of new s 62	20
	After section 61—	21
	<i>insert</i> —	22
	62 Transitional provision for Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020	23 24 25
	(1) Subsection (2) applies if, before the	26

	commencement, a claim under the <i>Fair Work Act 2009</i> (Cwlth), section 539 was started under part 5A.	1 2 3
(2)	Part 5A, as in force immediately before the commencement, continues to apply in relation to the claim.	4 5 6
Part 5	Amendment of Queensland Civil and Administrative Tribunal Act 2009	7 8 9
Clause 20	Act amended	10
	This part amends the <i>Queensland Civil and Administrative Tribunal Act 2009</i> .	11 12
Clause 21	Amendment of sch 3 (Dictionary)	13
	Schedule 3, definition <i>minor civil dispute</i> —	14
	<i>insert</i> —	15
	4 A claim mentioned in paragraph 1(a) does not include a claim under the <i>Fair Work Act 2009</i> (Cwlth), section 539.	16 17 18
	<i>Note</i> —	19
	See the <i>Fair Work Act 2009</i> (Cwlth), section 539 for the conferral of jurisdiction on eligible State or Territory courts in relation to the contravention of civil remedy provisions under that Act. In relation to Industrial Magistrates Courts, see the <i>Industrial Relations Act 2016</i> , chapter 11, part 3, division 4. In relation to Magistrates Courts, see the <i>Magistrates Courts Act 1921</i> .	20 21 22 23 24 25 26 27