



Western Australia

Employee Wage and Benefit Denial Bill 2019

Explanatory Memorandum

Every day, over a million individuals, dedicate their time and effort to be a part of Western Australia's labour force. The reward of wages ensures the labour force obtains an ability to sustain a decent standard of living. Decent wages facilitate the capacity to safeguard the necessities for a sophisticated lifestyle. However, the satisfactory growth in wages over the past years has inhibited the potential for working Western Australians to improve upon their lifestyle. Additionally, the uprise of wage theft in the Western Australian community reflects the substantial power employers have over their employees. This authority to deny and withdraw the wages and/or other employee benefits that Western Australian workers have earned has created financial stress and diminished employee confidence in the workplace.

Wage theft has not only impacted Western Australians but has affected the workforce spanning the entirety of Australia. Nationally, approximately \$1 billion worth of wages is lost each year, evidencing the current legal framework makes it unchallenging for employers to deliberately underpay their employees' wages and entitlements. The most vulnerable demographics associated with wage theft are young and/or migrant workers, who are dependable on the minimum wage. The financial suppression associated with wage theft to these, and to other demographics, highlight the importance of increased action on this issue.

Hence, this Bill seeks to criminalise the action of employers intentionally claiming employee wages and the purposeful obtainment of employee entitlements. As wage theft is a contemporary problem that has only recently been brought to attention, this Bill will outline the various ways wage theft can occur, and the debilitating impact wage theft has on an individual's life, and on the wider community. The Bill will ensure the rights of Western Australian workers are being attended to and capitalised on. This will be achieved through establishing harsher punishments for the employers and entities engaged in this act, proportioned accordingly to the extent of the misdeed as laid out in this Bill. Furthermore, this Bill will highlight the ways in which an employee can approach their employer if they believe that are being subjected to wage theft.

Nationally, there are no laws criminalising the incidence of an employer preventing employee access to their wages and entitlements. This Bill will ensure Western Australia capitalises on this issue to further promote the working rights of Western Australians.



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Western Australia

A Bill for —

An Act to criminalise the action of employers intentionally denying an employees' claim to wages and entitlements in the workplace, and to place this under the purview of Western Australian Government agencies.

Part 1 — Preliminary

1. Short title

This Bill may be cited as the *Employee Wage and Benefit Denial Bill 2019*.

2. Commencement

This Bill commences on the day on which this Act receives Royal Assent.

3. Interpretation

In this Bill, unless the contrary intention appears —

“Benefit” refers to anything an employee receives for undertaking or working in that particular job. An example of employee benefit is to some extent wages, union coverage, superannuation and commission.

“Department” refers to the area of state government deemed responsible for oversight over matters relating to wages and industrial relations, as it relates to those outlined in this Bill.

“Discrimination” refers to its ordinary meaning, and specific to wage and entitlement denial.

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“Employee” means employee covered and bound by the national workplace relations laws.

“Employer” means employer covered and bound by the national workplace relations laws.

“Entitlements” refers to those listed in the National Employment Standards; synonymous with Benefits.

“EOC” means an abbreviation for the Equal Opportunity Commission.

“Junior” means an employee under 21 years of age.

“National Employment Standards” means minimum standards that apply to the employment of national system employees.

“Pay Rates” means the base hourly rate in which an employee is paid based on their industry award or the minimum wage according to the national minimum wage order released by the Fair Work Commission.

“SAT” means an abbreviation for the State Administrative Tribunal.

“Work-Related Activities” means any type of activity directly related to the job which an employee participates in such as staff meetings and training days.

“Wage” refers to the sum total of money an employee earns for undertaking a particular occupation.

“Wage theft” means intentionally stealing or depriving a worker of reaping their full and appropriate wage (money earned) and/or benefits.

“Youth” means a person who is legally eligible to work but is under 25 years of age.

Part 2 — Employees Rights and Entitlements

Division 1 — Standard Employee Rights and Entitlements

4. Standard employee entitlements

The standard entitlements of an employee must supplement -

- (a) The terms and conditions of the employment contract; and
- (b) *The Fair Work Act 2009*; Part 2-2 – The National Employment Standards

5. Standard employee rights

- (1) The standard rights of an employee must supplement -

- (a) The terms and conditions of the employment contract; and
- (b) The allowance to consult the Equal Opportunity Commissioner

Division 2 — Post-discrimination Employee Rights

6. Employee rights when subjected to discrimination

If an employee is discriminated against, they are entitled to —

- (1) Consult the Equal Opportunity Commissioner; and
- (2) The Equal Opportunity Commissioner exercising their power/s, with procedures complying with the *Equal Opportunity Act 1984*; and
- (3) Full repayment of their monetary loss.

Part 3 — Occurrences of Wage Theft

Division 1 — Benefits of an employee

7. Denial of employee benefits

An employer commits an offence if they -

- (a) Deny an employee of any of their entitled benefits; and/or
- (b) Underpay an employee's entitled benefits; and/or
- (c) Under accrue an employee's entitled benefits

Division 2 — Wages of an Employee

8. Denial of employee wages

An employer commits an offence if they —

- (a) Deny an employee fo their entitled wages; and/or
- (b) Deny an employee of wages for work-related activities; and/or
- (c) Underpay an employee's entitled wage.

Division 3 — Awards and Pay Rates of Employees

9. Junior awards and pay rates

An Employer commits an offence if they fail to increase a junior employees' base pay rate relative to the employees' age according to their award or junior minimum wage.

10. Employee awards and pay rates

Each offence listed in Divisions 1 to 3 of Part 3 pertains to each individual employee entitlements under their respective awards or national minimum wage order.

Part 4 — Sanctions and Compensation

Division 1 — Notices

11. Compliance directions

If a submission to the Equal Opportunity Commission finds that an occurrence of wage theft has occurred -

- (a) The Regulatory Authority may give the approved provider a written direction (a compliance direction) requiring the approved provider to take the steps specified in the direction to comply with that provision
- (b) An approved provider must comply with a direction within the period (being not less than 14 days) specified in the direction.
- (c) Penalty of \$2,000 in the case of an individual; and penalty of \$10,000 in any other case.

12. Compliance notices

(1) This section applies if the Equal Opportunity Commission is satisfied that an education and care service is not complying with any provision of this Law

- (2) The Regulatory Authority may give the approved provider a notice (a compliance direction) requiring the approved provider to take the steps specified in the notice to comply with that provision
- (b) An approved provider must comply with a compliance notice within the period (being not less than 14 days) specified in the notice.
- (c) Penalty of \$6,000 in the case of an individual; and penalty of \$30,000 in any other case.

13. State Administrative Tribunal

In the event of the employer failing to comply with the compliance directions and notices as set out in Clauses 11 and 12, the matter will be referred to the State Administrative Tribunal by the department for mediation and arbitration.

Division 2 — Sanctions for Non-Compliance failing arbitration

14. State Administrative Tribunal ruling

If a settlement cannot be reached, the State Administrative Tribunal will—

- (a) Declare the occurrence of wage theft;
- (b) Rule appropriate compensation; and
- (c) Rule appropriate sanctions.

15. Sanctions in the case of an individual

In the event of an individual being found to have knowingly committed an offence as outlined in this legislation, failing arbitration —

- (a) The employee shall be entitled to full compensation as dictated by the State Administrative Tribunal;
- (b) The Individual employer will be sanctioned, to an amount not exceeding \$10,000 for each current or former employee to be found to have been discriminated against

16. Sanctions in any other case

In the event of an enterprise, partnership, and/or corporation, or any other entity to have been found to have knowingly committed an offence as outlined in this legislation, failing arbitration —

- (a) The employee shall be entitled to full compensation as dictated by the State Administrative Tribunal;
- (b) The Individual employer will be sanctioned, to an amount not exceeding \$10,000 for each current or former employee to be found to have been discriminated against

17. Criminalisation

Any instance of wage theft that is to have been found as a result —

- (a) Accident;
- (b) Negligence; or
- (c) Ignorance or misunderstanding of the law will be classified as a criminal offence

Part 5 — Oversight

Division 1 — Equal Opportunity Commission (WA)

18. Addition of wage theft protection under the Equal Opportunity Commission

In addition to currently provided powers of the Equal Opportunity Commission, set under the Equal Opportunity Act 1984, the Equal Opportunity Commission will be granted authority to investigate, confirm, and where necessary enforce and promote knowledge over any regulations set under this Bill.

19. Authority and powers granted to Equal Opportunity Commission

Equal Opportunity Commission, in addition to current authority will —

- (a) Investigate and conciliate complaints lodged by people who believe they have been deprived of an entitlement or compensation against them (as outlined in Part 2 and 3); and
- (b) To conduct community education and training programs on requirements set by clauses within this legislation; and
- (c) Provide community information on wage and compensation entitlements

20. Privacy obligations

The Equal Opportunity Commission, when requested by the party whom lodges a complaint (as stated in Clause 12: Authority and Powers granted to Equal Opportunity Commission), must ensure that the identity of the complainant is not revealed to the employer throughout the duration of investigation.

21. Issue resolution

The Equal Opportunity Commission must attempt to resolve the conflict between the employer and the employee in regards to incomplete benefits and entitlement claims through the following methods --

- (a) Facilitating mediation between the parties to issue a settlement; and
- (b) Advising for appropriate compensation if necessary to either parties;
and

(c) Follow additional procedures laid out in the *Equal Opportunity Act 1984*.

22. Failure to resolve

If either party cannot come to a resolution, the Equal Opportunity Commission must propose a settlement to both parties. If this proposed settlement is not deemed acceptable by either party, the Equal Opportunity Commission must refer the case to the State Administrative Tribunal.

23. Evidence, records and investigation referral

If a case has been referred to the State Administrative Tribunal, all evidence and records of the settlement process and the preceding investigation by the Equal Opportunity Commission must be provided to the State Administrative Tribunal.

Division 2 — State Administrative Tribunal

24. Authority of the State Administrative Tribunal

The State Administrative Tribunal, in addition to current authority must --

- (a) Review and decide on cases relating to Wage Theft submitted by the Equal Opportunity Commission; and
- (b) Call for conduction of further appropriate investigation if necessary; and
- (c) Facilitate opportunities for dispute settlement for parties involved; and
- (d) Issue sanctions based on Part 4 of this legislation

Division 3 — Enabling Act

25. Enabling act

Once this bill has been approved by the parliament, and given Royal Assent, this Bill will be considered as an Enabling legislation for the State Administrative Tribunal, as per required under the State Administrative Tribunal Act 2004.—

Part 6— Review

26. Review Period

- (1) A review, to be conducted by the EOC, into the *Employee Wage and Benefit Denial Bill 2019* will be conducted every year from the commencement of this bill.
- (2) The committee will submit a report to the Minister for Commerce, detailing the findings of each review.
- (3) Reports must be submitted within three (3) months of each review being complete.
- (4) If the Equal Opportunity commission fails to resolve the relevant case, it must be referred to the State Administrative Tribunal.

27. EOC Review

The EOC will be responsible for reviewing —

- (a) The employee rights and entitlements; and

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- (b) The occurrences of wage theft; and
- (c) The denial of employee benefits or wages; and
- (d) The evidence of employee awards and pay rates.

28. SAT Review

The SAT will be responsible for reviewing —

- (a) The employee rights and entitlements; and
- (b) The occurrences of wage theft; and
- (c) The denial of employee benefits or wages; and
- (d) The evidence of employee awards and pay rates.