



GOVERNMENT RESPONSE TO THE INQUIRY INTO WAGE THEFT IN WESTERN AUSTRALIA

The Report of the Inquiry into Wage Theft in Western Australia was released by the State Government on 6 December 2019.

Wage theft is the systematic and deliberate underpayment of wages and entitlements to workers. The Inquiry had nine Terms of Reference and covered both the State and national industrial relations systems.

The Inquiry considered whether there is evidence of wage theft occurring in Western Australia, the reasons that wage theft occurs, and the impact on workers, business and the community. It examined whether the current regulatory framework at the State and federal level is effective in combating wage theft, whether new laws should be introduced in Western Australia to address wage theft, and if so, whether wage theft should be a criminal offence. Other strategies that could be implemented by the State Government or stakeholders were also considered.

The Inquiry found that wage theft is occurring in Western Australia. The forms of systematic and deliberate underpayments identified in the Inquiry Report include unpaid hours, non-payment of wages or allowances for work performed, underpayment of wages and entitlements, unauthorised or unreasonable deductions and non-payment of superannuation. Cafes and restaurants, contract cleaning, retail and horticulture are identified as areas where the likelihood of wage theft is higher.

The Inquiry Report notes that wage theft can have a significant impact on workers through financial hardship and can impact on compliant businesses through creating an unfair competitive disadvantage for employers who correctly pay their employees.

The Inquiry concluded that the reasons why wage theft is occurring include the lack of detection of non-compliance and enforcement of employment laws, the intention of some employers to maximise financial return, the vulnerability of some workers and a lack of knowledge of employment conditions by both workers and employers.

The Inquiry Report makes a total of 28 recommendations to address wage theft in Western Australia including raising the prospect that most serious cases of systematic and deliberate underpayment of wages and entitlements could attract a criminal sanction.

The McGowan Government intends to take action to combat wage theft through a range of strategies consistent with the recommendations of the Inquiry. Proposed reforms include:

- Establishing a wage theft website at www.wagetheft.wa.gov.au which provides information for Western Australian workers in both the State and national industrial relations systems on:
 - how to seek assistance with resolving an underpayment issue or unpaid leave;
 - how to report wage theft anonymously to the relevant government department; and
 - how to seek help with unpaid superannuation.

- As recommended, giving further consideration as to whether wage theft should be criminalised. This will include consultation with the Commonwealth, which has committed to criminalise the most serious forms of exploitative conduct in the national industrial relations system.
- Supporting the need to develop effective information campaigns in consultation with unions and employers and the other recommendations in the Inquiry Report for information and education initiatives to combat wage theft.
- Supporting legislative change to enhance the level of cooperation and information sharing between the Department of Mines, Industry Regulation and Safety and the Fair Work Ombudsman.
- Engaging with the Commonwealth Government on a range of issues to address wage theft, including federal measures to facilitate cooperation between State and federal industrial inspectors and seeking greater funding for the Fair Work Ombudsman’s presence in Western Australia.
- Committing in principle to a labour hire licensing scheme in Western Australia and consulting with the Commonwealth, which has committed to a national labour hire registration scheme for the horticulture, meat processing, cleaning and security industries.
- Supporting amendments to State industrial laws which include:
 - broader powers for industrial inspectors
 - in the case of wage theft:
 - the ability for a successful claimant in enforcement proceedings to recover costs for the services of a lawyer or agent
 - the Western Australian Industrial Relations Commission to be given the power to award interest on a denied contractual benefit and a general power to make any order it considers appropriate
 - a prohibition on:
 - employers unreasonably requiring employees to spend, or “pay back” to the employer, their wages
 - employers discriminating against employees because they have inquired or complained about their employment conditions
 - employment being advertised at less than the applicable minimum wage for the position
 - sham contracting arrangements
- Commitment to bolstering the Industrial Magistrates Court’s processes and powers to combat wage theft.
- Seeking funding from the Commonwealth for the Industrial Magistrates Court as most matters dealt with by the Industrial Magistrates Court arise under from the national system and the Commonwealth does not currently contribute to its funding.
- Commitment to strengthening procurement processes, particularly in high risk industries. Consultation will occur with relevant stakeholders to progress this issue.
- Recognising that to combat wage theft there needs to be an appropriate resourcing of industrial inspectors and educational services.