



Queensland

# **Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020**

**Act No. 34 of 2020**

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**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**

**[Assented to 14 September 2020]**





Contents

	507E	Procedure for conciliation process . . . . .	13
	507F	Conciliator to file certificate . . . . .	13
	507G	Conciliation agreements . . . . .	14
	507H	Orders giving effect to conciliation agreements . . . .	14
	507I	Admission made in conciliation process . . . . .	14
	Subdivision 3 Other provision		
	507J	Fair work small claim—representation . . . . .	15
10		Amendment of s 511 (Functions of the registry) . . . . .	15
11		Amendment of s 529 (Representation of parties generally) . . . .	16
12		Amendment of s 530 (Legal representation) . . . . .	16
13		Amendment of s 531 (Decisions of the commission and magistrates)	17
14		Insertion of new ch 11, pt 5, div 5A . . . . .	17
	Division 5A Conciliation of unpaid amount claims		
	547A	Purpose of division . . . . .	18
	547B	Definitions for division . . . . .	18
	547C	Conciliation . . . . .	18
	547D	Conciliators for unpaid amount claims . . . . .	19
	547E	Procedure for conciliation process . . . . .	19
	547F	Conciliator to file certificate . . . . .	20
	547G	Conciliation agreements . . . . .	20
	547H	Orders giving effect to conciliation agreements . . . .	20
	547I	Admission made in conciliation process . . . . .	21
15		Insertion of new ch 18, pt 5 . . . . .	21
	Part 5 Transitional provisions for Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020		
	1091	Application of provisions about fair work claims . . . .	22
	1092	Application of provisions about conciliation of unpaid amount claims . . . . .	22
15A		Amendment of sch 3 (Civil penalties) . . . . .	22
16		Amendment of sch 5 (Dictionary) . . . . .	23
<b>Part 4</b>	<b>Amendment of Magistrates Courts Act 1921</b>		
17		Act amended . . . . .	23
18		Amendment of s 42B (Application of pt 5A) . . . . .	24
19		Insertion of new s 62 . . . . .	24
	62	Transitional provision for Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 . . . .	24
<b>Part 5</b>	<b>Amendment of Queensland Civil and Administrative Tribunal Act</b>		

	<b>2009</b>	
20	Act amended . . . . .	24
21	Amendment of sch 3 (Dictionary) . . . . .	24



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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

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

### **2 Commencement**

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

## **Part 2 Amendment of Criminal Code**

### **3 Code amended**

This part amends the Criminal Code.

### **4 Amendment of s 391 (Definition of *stealing*)**

(1) Section 391(2AA)—

*omit.*

(2) Section 391—

*insert—*

(6A) For stealing that is a failure to pay an employee, or another 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—

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

[s 5]

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- (b) subsection (6) does not apply; and
  - (c) the amount is converted to the person's own use when—
    - (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
    - (ii) the amount is not paid.
- (3) Section 391(7)—

*insert—*

**Act** includes an Act of another State or the Commonwealth.

**industrial instrument** means—

- (a) an industrial instrument under the *Industrial Relations Act 2016*, schedule 5; or
- (b) a fair work instrument under the *Fair Work Act 2009* (Cwlth).

**special property**, in a thing, includes—

- (a) a charge or lien on the thing; and
- (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
- (c) a right of an employee, in relation to the performance of work by the employee—
  - (i) to be paid the thing; or
  - (ii) to have the thing paid to another person on behalf of the employee.

## 5 Amendment of s 398 (Punishment of stealing)

Section 398, punishment in special cases—



*insert—*

## **16 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.

### **6 Amendment of s 408C (Fraud)**

Section 408C(2)—

*insert—*

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

## **Part 3 Amendment of Industrial Relations Act 2016**

### **7 Act amended**

This part amends the *Industrial Relations Act 2016*.

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

Section 13—

*insert—*

(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.

### **8A Insertion of new ch 9, pt 1, div 6**

Chapter 9, part 1—

[s 8A]

---

*insert—*

## **Division 6            Providing employee information to registered employee organisations**

### **354A Definition for division**

In this division—

*registered employee organisation* means an employee organisation that is registered under chapter 12.

### **354B Authority to give information**

- (1) An employee may authorise the employee's employer to give information about the employee to a registered employee organisation.
- (2) The authorisation may be given to the employer—
  - (a) directly by the employee; or
  - (b) by a registered employee organisation on behalf of the employee.
- (3) The authorisation—
  - (a) must be in writing and legible; and
  - (b) must state—
    - (i) the name of the employee; and
    - (ii) the name of the employee's employer; and
    - (iii) the information to which the authorisation applies; and
    - (iv) the name of the registered employee organisation that may request the information and to which the information must be given; and

- (c) must be signed by the employee, including by electronic signature; and
  - (d) may be made electronically.
- (4) The authorisation has effect until the earliest of the following events happens—
- (a) the authorisation is withdrawn by the employee;
  - (b) the employee's employment with the employer ends;
  - (c) there is a break in the employee's continuity of employment of longer than 3 months.
- (5) The employer must keep an authorisation given under this section at, or in a place where it can be accessed from, a workplace of the employer in Queensland.

*Note—*

This subsection is a civil penalty provision.

### **354C Requirement to give information**

- (1) This section applies if—
- (a) an employee has authorised an employer under section 354B to give information about the employee to a registered employee organisation; and
  - (b) the registered employee organisation gives the employer a written request for the information about the employee.
- (2) The employer must, within 15 business days after receiving the request, give the registered employee organisation—
- (a) the information requested to the extent it is held, or able to be accessed, by the employer; or

[s 8A]

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- (b) if some or all of the information requested can not be given because it is not held, or able to be accessed, by the employer or because subsection (3) applies—a notice identifying the information that can not be given and the reason it can not be given.

*Note—*

This subsection is a civil penalty provision.

- (3) Subsection (2)(a) does not apply if giving the information is inconsistent with an Act or law.
- (4) The information—
  - (a) must be given in writing and be legible; and
  - (b) may be given electronically.
- (5) If the employer gives information to the registered employee organisation under subsection (2)(a), the employer must notify the employee.
- (6) If the employee is employed in a department (the *first department*), the information required to be given to the registered employee organisation by the first department includes information that—
  - (a) is held by another department; and
  - (b) relates to the employee’s employment in the first department.
- (7) However, if the employee is employed in more than 1 department, the information required to be given by the department to which the request is given is limited to the information about the employee’s employment in that department.
- (8) In this section—  
*department* includes a public service office.

### **354D Unlawful access**

A person must not wilfully deceive or mislead an

employer in order to gain access under this division to information about an employee.

Maximum penalty—40 penalty units.

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

Chapter 11, part 3—

*insert—*

### **Division 4 Fair work claims**

#### **Subdivision 1 Preliminary**

##### **507A Purpose of division**

The purpose of this division is to provide for the timely, inexpensive and informal resolution of fair work claims in an Industrial Magistrates Court.

*Notes—*

- 1 See the *Fair Work Act 2009* (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.
- 2 See also the *Fair Work Act 2009* (Cwlth), chapter 4, part 4-1 and the *Judiciary Act 1903* (Cwlth), section 79 for the practice and procedure of an Industrial Magistrates Court when exercising jurisdiction under the *Fair Work Act 2009* (Cwlth).

##### **507B Definitions for division**

In this division—

***civil remedy provision*** see the *Fair Work Act 2009* (Cwlth), section 539(1) and (3).

***fair work claim*** means a claim in relation to a civil remedy provision.

## **Subdivision 2 Conciliation**

### **507C Conciliation**

- (1) This section applies if a person has started a proceeding for a fair work claim in an Industrial Magistrates Court.
- (2) The registrar may refer the fair work claim to conciliation.
- (3) The referral of the fair work claim to conciliation—
  - (a) must be done as soon as practicable after the proceeding for the claim is started; and
  - (b) must be done before the Industrial Magistrates Court hears the claim; and
  - (c) should preferably be done before a party to the claim files a defence to the claim.
- (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—
  - (a) as soon as practicable; and
  - (b) before a conciliation conference starts.
- (5) If the registrar is notified under subsection (4)—
  - (a) the conciliation must not proceed; and
  - (b) the registrar must—
    - (i) notify the Industrial Magistrates Court that the conciliation is not proceeding and the reason it is not proceeding; and
    - (ii) refer the matter for hearing by the Industrial Magistrates Court.
- (6) The purposes of conciliation are to—

- (a) enable the parties to reach agreement on as many matters as possible; and
  - (b) reduce the scope of the matters at issue between the parties; and
  - (c) achieve a timely, cost-effective, proportionate and agreed resolution of the fair work claim if possible.
- (7) The conciliator appointed for the fair work claim must start conciliating the claim as soon as practicable after being appointed.

### **507D Conciliators for fair work claims**

Each commissioner is a conciliator for fair work claims.

### **507E Procedure for conciliation process**

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

*Example of a procedure that may be used—*

a conciliation conference

- (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.

### **507F Conciliator to file certificate**

- (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.

[s 9]

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- (2) For subsection (1), the conciliation process is finished if—
  - (a) the parties agree on a resolution of all or part of the fair work claim; or
  - (b) the conciliator decides the conciliation process is finished.

### **507G Conciliation agreements**

- (1) This section applies if, in a conciliation process, the parties agree on a resolution of all or part of the fair work claim.
- (2) The agreement must be written down and signed by or for each party.

### **507H Orders giving effect to conciliation agreements**

- (1) A party may apply to the Industrial Magistrates Court for an order giving effect to an agreement reached in a conciliation process.
- (2) However, a party may apply for the order only after the conciliator's certificate about the conciliation process is filed with the registrar.
- (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.

### **507I Admission made in conciliation process**

- (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.
- (2) In this section—



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*civil proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

### **Subdivision 3 Other provision**

#### **507J Fair work small claim—representation**

- (1) A party to a fair work small claim may be represented in an Industrial Magistrates Court by an official of an industrial association.
- (2) In this section—

*fair work small claim* means a fair work claim that may be dealt with under the small claims procedure mentioned in the *Fair Work Act 2009* (Cwlth), section 548.

*industrial association* see the *Fair Work Act 2009* (Cwlth), section 12.

*official*, of an industrial association, see the *Fair Work Act 2009* (Cwlth), section 12.

*Note*—

See also the *Fair Work Act 2009* (Cwlth), section 548(8) and *Fair Work Regulations 2009* (Cwlth), regulation 4.01(4).

## **10 Amendment of s 511 (Functions of the registry)**

Section 511(a) and (b), ‘and commission’—

*omit, insert*—

, each Industrial Magistrates Court in relation to fair work claims under part 3, division 4 and the commission

[s 11]

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**11 Amendment of s 529 (Representation of parties generally)**

Section 529(2), definition *proceedings*—

*omit, insert—*

*proceedings—*

- (a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and
- (b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.

**12 Amendment of s 530 (Legal representation)**

(1) Section 530(1)(e)(ii)—

*omit, insert—*

(ii) both of the following apply—

- (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
- (B) an Industrial Magistrates Court gives leave; or

(2) Section 530(1)—

*insert—*

(g) for proceedings before a conciliator—the conciliator gives leave.

(3) Section 530(7), definition *proceedings*—

*omit, insert—*

*proceedings—*

- (a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and
- (b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.

**13 Amendment of s 531 (Decisions of the commission and magistrates)**

- (1) Section 531(1)(a), ‘an amount ordered under section 405 or 475’—

*omit, insert—*

a relevant amount

- (2) Section 531—

*insert—*

- (6) In this section—

***relevant amount*** means—

- (a) an amount of not more than \$50,000 ordered under section 379, 386 or 396; or
- (b) an amount ordered under section 405 or 475.

**14 Insertion of new ch 11, pt 5, div 5A**

Chapter 11, part 5—

*insert—*

**Division 5A Conciliation of unpaid amount claims**

[s 14]

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### **547A Purpose of division**

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.

### **547B Definitions for division**

In this division—

*industrial tribunal*, for an unpaid amount claim, means—

- (a) for a claim started by an application to a magistrate—the magistrate; or
- (b) for a claim started by an application to the commission—the commission.

*unpaid amount claim* means a claim that may be made by application under section 379, 386, 396 or 476.

### **547C Conciliation**

- (1) This section applies if a person has started a proceeding for an unpaid amount claim.
- (2) The registrar may refer the unpaid amount claim to conciliation.
- (3) The referral of the unpaid amount claim—
  - (a) must be done as soon as practicable after the proceeding for the claim has started; and
  - (b) must be done before the industrial tribunal for the claim hears it; and
  - (c) should preferably be done before a party to the claim files a defence to the claim.
- (4) If the registrar refers the unpaid amount claim to conciliation and a party does not wish to

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participate in conciliation, the party must notify the registrar of that fact—

- (a) as soon as practicable; and
  - (b) before a conciliation conference starts.
- (5) If the registrar is notified under subsection (4)—
- (a) the conciliation must not proceed; and
  - (b) the registrar must—
    - (i) notify the industrial tribunal for the unpaid amount claim that the conciliation is not proceeding and the reason it is not proceeding; and
    - (ii) refer the matter for hearing by the industrial tribunal.
- (6) The purposes of conciliation are to—
- (a) enable the parties to reach agreement on as many matters as possible; and
  - (b) reduce the scope of the matters at issue between the parties; and
  - (c) achieve a timely, cost-effective, proportionate and agreed resolution of the unpaid amount claim if possible.
- (7) The conciliator appointed for the unpaid amount claim must start conciliating the claim as soon as practicable after being appointed.

### **547D Conciliators for unpaid amount claims**

Each commissioner is a conciliator for unpaid amount claims.

### **547E Procedure for conciliation process**

- (1) For a conciliation process, the conciliator—

[s 14]

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- (a) must decide the procedure to be used; and
- (b) may adopt any procedure that will, in the conciliator's opinion, enable the conciliator to perform the conciliator's functions.

*Example of a procedure that may be used—*

a conciliation conference

- (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.

#### **547F Conciliator to file certificate**

- (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) For subsection (1), the conciliation process is finished if—
  - (a) the parties agree on a resolution of all or part of the unpaid amount claim; or
  - (b) the conciliator decides the conciliation process is finished.

#### **547G Conciliation agreements**

- (1) This section applies if, in a conciliation process, the parties agree on a resolution of all or part of the unpaid amount claim.
- (2) The agreement must be written down and signed by or for each party.

#### **547H Orders giving effect to conciliation agreements**

- (1) A party to an unpaid amount claim may apply to

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the industrial tribunal for the claim for an order giving effect to an agreement reached in a conciliation process.

- (2) However, a party may apply for the order only after the conciliator's certificate about the conciliation process is filed with the registrar.
- (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.

#### **547I Admission made in conciliation process**

- (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) In this section—  
*civil proceeding* does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

### **15 Insertion of new ch 18, pt 5**

Chapter 18—

*insert—*

#### **Part 5**

#### **Transitional provisions for Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020**

[s 15A]

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### **1091 Application of provisions about fair work claims**

Chapter 11, part 3, division 4 only applies to a proceeding for a fair work claim that is started after the commencement.

### **1092 Application of provisions about conciliation of unpaid amount claims**

Chapter 11, part 5, division 5A only applies to a proceeding for an unpaid amount claim that is started after the commencement.

## **15A Amendment of sch 3 (Civil penalties)**

Schedule 3—

*insert—*

### **Chapter 9—Records and wages**

- |   |   |                   |                     |
|---|---|-------------------|---------------------|
| s 354B(5) (Authority to give information) | (a) a person affected by the contravention  | the<br>commission | 27 penalty<br>units |
|   | (b) an employee organisation of which a person mentioned in paragraph (a) is a member |                   |                     |
|   | (c) an inspector  |                   |                     |



s 354C(2) (Requirement to give information)	(a) a person affected by the contravention	the commission	27 penalty units
	(b) an employee organisation of which a person mentioned in paragraph (a) is a member		
	(c) an inspector		

## 16 Amendment of sch 5 (Dictionary)

Schedule 5—

*insert—*

*civil remedy provision*, for chapter 11, part 3, division 4, see section 507B.

*fair work claim* see section 507B.

*industrial tribunal*, for chapter 11, part 5, division 5A, for an unpaid amount claim, see section 547B.

*registered employee organisation*, for chapter 9, part 1, division 6, see section 354A.

*unpaid amount claim* see section 547B.

## Part 4 Amendment of Magistrates Courts Act 1921

### 17 Act amended

This part amends the *Magistrates Courts Act 1921*.

[s 18]

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**18 Amendment of s 42B (Application of pt 5A)**

Section 42B(3) and (4)—

*omit, insert—*

- (3) A claim under the *Fair Work Act 2009* (Cwlth), section 539 is not an employment claim.

**19 Insertion of new s 62**

After section 61—

*insert—*

**62 Transitional provision for Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020**

- (1) Subsection (2) applies if, before the commencement, a claim under the *Fair Work Act 2009* (Cwlth), section 539 was started under part 5A.
- (2) Part 5A, as in force immediately before the commencement, continues to apply in relation to the claim.

**Part 5 Amendment of Queensland Civil and Administrative Tribunal Act 2009**

**20 Act amended**

This part amends the *Queensland Civil and Administrative Tribunal Act 2009*.

**21 Amendment of sch 3 (Dictionary)**

Schedule 3, definition *minor civil dispute*—

*insert—*

- 4 A claim mentioned in paragraph 1(a) does not include a claim under the *Fair Work Act 2009* (Cwlth), section 539.

*Note—*

See the *Fair Work Act 2009* (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 *Industrial Relations Act 2016*, chapter 11, part 3, division 4. In relation to Magistrates Courts, see the *Magistrates Courts Act 1921*.

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