



Western Australia

Employee Wage and Benefit Denial Act 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 unsatisfactory 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 Action 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 Act 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 Act 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 Act 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 Act. Furthermore, this Act 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 Act will ensure Western Australia capitalises on this issue to further promote the working rights of Western Australians.



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Employee Wage and Benefit Denial Act 2019

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Western Australia

An Act 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, and for related matters.

Part 1 — Preliminary

1. Short title

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

2. Commencement

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

3. Interpretation

In this Act, unless the contrary intention appears —

“**Benefit**” means 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.

“**CALD**” means Culturally and Linguistically Diverse

“**Department**” means 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 Act.

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

“**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**” means those listed in the National Employment Standards; synonymous with benefits.

“**EOC**” means 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 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 State Administrative Tribunal.

“**Wage**” means 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.

“**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.

“**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

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 —

- a. Consult the Equal Opportunity Commissioner;
- b. The Equal Opportunity Commissioner exercising their power/s, with procedures complying with the *Equal Opportunity Act 1984*; and/or
- c. 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;
- (b) Underpay an employee's entitled benefits;
- (c) Under accrue an employee's entitled benefits; and/or
- (d) Fail to comply or fulfil any additional or special benefits present in a contract signed by both the employee and employer.

Division 2 — Wages of an Employee

8. Denial of employee wages

An employer commits an offence if they —

- (a) Deny an employee of their entitled wages;
- (b) Deny an employee of wages for work-related activities;
- (c) Underpay an employee's entitled wage; and/or
- (d) Withhold an employee's wages as payment for any uniforms or equipment required to appropriately complete their job.

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. Issuance of compliance directives

Should the Equal Opportunity Commission deem a complaint as an occurrence of wage theft, the regulatory authority will, in no less than 7 days:

- (a) issue the employer a directive of compliance ordering:
 - i) immediate correction of misconduct;
 - ii) total reimbursement of all lost wages; and
 - iii) payment of \$4000 per affected employee; and
- (a) Send a representative to approve the business' wage standards based on a set of self-devised criteria.

12. Wage Standard Approval

While the criteria to uphold wage, standards are to be devised by the regulatory authority, proceedings shall involve, though are not limited to:

- (a) Convening separate and joint meeting with employers and employees;
- (b) The oversight of the employer's wage distribution process.

13. Further punitive procedures

Failure to

- (a) Comply with 11a; or
- (b) Uphold standards pursuant to the criteria in 11(b) will result in automatic referral to the State Administrative Tribunal for mediation and arbitration.

14. Fines accompanying repeat wage theft

(a) If an individual, company or business has been found to be a repeat offender of wage theft they will be fined.

- (b) Business earning up to:
 - (i) \$300,000 will be fined 1.5% of net profits per case;
 - (ii) \$600,000 will be fined 3% of net profits per case;
 - (iii) Business' earning up to \$1,250,000 will be fined 6% of all net profits per case;
 - (iv) Business' earning in excess of \$1,250,000 will be fined 9% of all net profits per case.

15. Imprisonment accompanying repeat wage theft

If a company, individual or business has been found to be guilty of more than one case of wage theft the responsible persons can be imprisoned for a minimum of five (5) years.

Division 2 — Sanctions for Non-Compliance failing arbitration

16. State Administrative Tribunal ruling

If a settlement cannot be reached, the SAT will —

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

17. 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 SAT; and
- (b) The individual employer will be sanctioned, to an amount not exceeding 2% of their net profits for each current or former employee to be found to be a victim of wage theft.

18. 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 SAT; and
- (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.

19. Criminalisation

Any instance of wage theft will be found to have been a result of —

- (a) A misunderstanding or misinterpretation of the law;
- (b) An accidental or unintentional error;
- (c) Negligence;

- (d) Deliberate, purposeful or reckless action to actively engage in wage theft.

20. Creation of taskforce

The Equal Opportunities Commission will create and operate a Migrant and CALD Workers' Taskforce.

21. Collaboration with other agencies and departments

The Migrant and CALD Workers' Taskforce will work with State and Federal Government agencies and departments including but limited to;

- (a) Australian Taxation Office;
- (b) Fair Work Ombudsman;
- (c) Department of Jobs and Small Business;
- (d) Australian Competition and Consumer Commission;
- (e) Department of Education and Training;
- (f) Department of Home Affairs;

to ensure the rights of migrant workers and CALD employees are protected.

22. Role of the Migrant and CALD Workers' Taskforce

- (a) Identify regulatory and compliance weaknesses that create the conditions that allow exploitation of vulnerable migrant and CALD workers;
- (b) Encourage reporting of wage theft;
- (c) Reduce the fear of visa cancellation or removal from Australia if reporting wage theft;
- (d) Assist with providing information to migrant and CALD workers about their rights in their preferred language;
- (e) Provide assistance and interpretation services to assist migrant and CALD workers going through the processes outlined in this Act.
- (f) Assist with encouraging migrant and CALD workers integration with the wider workforce;
- (g) Provide and refer employers to information and services to assist with working with migrant and CALD workers;
- (h) Monitor advertisements for employees not written in English to help avoid the exploitation of migrant and CALD workers.

Part 5 — Oversight

Division 1 — Equal Opportunity Commission (WA)

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

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

24. Authority and powers granted to Equal Opportunity Commission

The EOC, 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;
- (b) Conduct community education and training programs on requirements set by clauses within this legislation; and
- (c) Provide community information on wage and compensation entitlements.

25. Privacy obligations

The EOC, when requested by the party whom lodges a complaint pursuant to Clause 12, must ensure that the identity of the complainant is not revealed to the employer throughout the duration of investigation.

26. Issue resolution

The EOC must attempt to resolve the conflict between the employer and the employee in regard to incomplete benefits and entitlement claims through the following methods --

- (a) Facilitating mediation between the parties to issue a settlement;
- (b) Advising for appropriate compensation if necessary to either parties; and
- (c) Follow additional procedures laid out in the *Equal Opportunity Act 1984*.

27. Failure to resolve

- (1) If either party cannot come to a resolution, the EOC must propose a settlement to both parties.
- (2) If this proposed settlement is not deemed acceptable by either party, the EOC must refer the case to the SAT.

28. Evidence, records and investigation referral

If a case has been referred to the SAT, all evidence and records of the settlement process and the preceding investigation by the EOC must be provided to the SAT.

Division 2 — State Administrative Tribunal

29. Authority of the State Administrative Tribunal

The SAT, in addition to current authority must —

- (a) Review and decide on cases relating to wage theft submitted by the EOC;
- (b) Call for conduct of further appropriate investigation if necessary;
- (c) Facilitate opportunities for dispute settlement for parties involved; and
- (d) Issue sanctions pursuant to Part 4 of this legislation

Division 3 — Enabling Act

30. Enabling act

Once this Act has been approved by Parliament and given Royal Assent, this Act will be considered as enabling legislation for the SAT pursuant to the *State Administrative Tribunal Act 2004*.

Part 6— Review

31. Review Period

- (1) A review, to be conducted by the EOC, into the *Employee Wage and Benefit Denial Act 2019* will be conducted every year from the commencement of this Act.
- (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 EOC fails to resolve the relevant case, it must be referred to the SAT.

32. EOC Review

The EOC will be responsible for reviewing —

1. The employee rights and entitlements;
2. The occurrences of wage theft;
3. The denial of employee benefits or wages; and
4. The evidence of employee awards and pay rates.

33. SAT Review

The SAT will be responsible for reviewing —

1. The employee rights and entitlements;
2. The occurrences of wage theft;
3. The denial of employee benefits or wages; and
4. The evidence of employee awards and pay rates.