

Crimes (Theft by Employer) Amendment Bill

Member's Bill

As reported from the Education and Workforce Committee

Commentary

Recommendation

The Education and Workforce Committee has examined the Crimes (Theft by Employer) Amendment Bill and recommends by majority that it not be passed. We recommend all amendments unanimously.

Introduction

This Member's bill was introduced to the House during the 53rd Parliament in the name of Ibrahim Omer MP. The bill was read a first time on 30 August 2023 and referred to the Education and Workforce Committee. On reinstatement in the 54th Parliament, the bill was adopted by Camilla Belich MP.

The bill would insert new section 220AA into the Crimes Act 1961 to provide that an employer's intentional failure to pay an employee any money owed in relation to the employment is theft.

The bill would also set maximum penalties for this new offence of theft by employer. If the employer is an individual, the maximum penalty would be 1 year's imprisonment, a fine of \$5,000, or both. In any other case, the maximum penalty would be a fine of \$30,000.

The explanatory note to the bill as introduced says that the new offence is intended to capture employers who owe wages and intentionally do not pay them to the employee. This would include the unlawful withholding of wages, salaries, and other monetary entitlements within an employment relationship. The explanatory note says that existing processes for responding to wage theft are too complex and can be a deterrent for victims of wage theft. It says that existing offences related to theft by a person in a special relationship are insufficient to account for wage theft by employers.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Should the House decide to proceed with the bill, we suggest the Committee of the whole House consider whether the penalties provided for in new section 220AA are set at the appropriate level or whether there should be a stepped approach based on the levels of offending (such as that in section 223 of the Act relating to the punishment of theft).

Proposed amendments

This commentary covers the amendments we recommend to the bill as introduced, which are intended to help improve the workability of the bill.

Clarifying the employment arrangements and entitlements

Clause 4 of the bill would insert section 220AA into the Crimes Act. New section 220AA(1) sets out the employment arrangements and entitlements that would be covered under the new offence.

Meaning of "employment agreement"

For the avoidance of doubt, we propose making it clear that the term "employment agreement" has the same meaning as that in section 5 of the Employment Relations Act 2000. We recommend inserting this clarification in new subsection (3).

In new section 220AA(1)(b)(i), we propose deleting "between A and B" to make it clearer that payments required to be made to employees bound by a collective agreement are also covered. A collective agreement is an agreement between an employer (or employers) and a union (or unions), rather than an agreement between an employer and an employee. The definition of "employment agreement" in section 5 of the Employment Relations Act includes an employee's terms and conditions of employment in a collective agreement, together with any additional terms and conditions of employment.

Clarifying the coverage for homeworkers

Under the Employment Relations Act, "employment agreement" includes a contract for services between an employer and a homeworker. The term "homeworker" is defined in section 5 of that Act.

We recommend linking to that definition in proposed new section 220AA(3). This would make it clear that engaging a homeworker would be considered employing them for the purposes of the new section. We think this would provide consistency with both the Employment Relations Act and the policy intent of the bill.

Clarifying what entitlements are covered

New section 220AA(1)(b) refers to the employer being required to pay money owed to the person in relation to their employment, either under an employment agreement or “as otherwise required under law”. In regard to the latter, the bill gives examples of the relevant law, namely the Holidays Act 2003, the Minimum Wage Act 1983, and the Wages Protection Act 1983. We think that the bill should be clearer that the payment in question must be required under an Act of Parliament (rather than any broader interpretation of “under law”). We recommend amending subparagraph (ii) accordingly.

Clarification regarding “crime involving dishonesty”

The Crimes Act classifies some crimes and offences as a “crime involving dishonesty”. Section 2 of the Crimes Act defines a “crime involving dishonesty” as those crimes and offences described in Part 10 of the Act except for certain sections. In the bill as introduced, new section 220A would be in Part 10 of the Act and included in the definition. The bill intends to criminalise intentional theft of wages. We received advice that new section 220AA does not fit correctly within the category of crimes involving dishonesty, as new section 220AA would not always involve dishonesty on the employer’s part. We therefore recommend inserting clause 3A to amend section 2 of the Crimes Act to exclude theft by employer from this classification as a crime involving dishonesty.

New Zealand Labour Party and Green Party of Aotearoa New Zealand differing view

This is a tough on crime bill, as the original sponsor of the bill, Ibrahim Omer, said at the bill’s first reading. This bill would provide a deterrent and greater punishment to employers who intentionally withhold or take employees’ legitimate wages, to ensure greater protection for workers, particularly vulnerable workers, and would right an imbalance within the current law that treats withholding wages or entitlements by employers as a civil matter, when theft by employees is most often treated correctly as a crime.

Civil wage claims are difficult for any employee to initiate and often time consuming and expensive. This bill would have allowed employees to take complaints to police about the intentional theft of their wages.

Many similar jurisdictions to New Zealand such as California, Victoria, Queensland, Norway, and most recently the Commonwealth of Australia have in recent years passed legislation criminalising wage-theft by employers.

Additionally, the Crimes (Theft by Employer) Amendment Bill received support from 84 percent of the submitters to the select committee.

Amending the Crimes Act 1961 so that criminal sanctions match the gravity of the crime aligns with the current Government’s ambition for the current Government to be tougher on crime. However, it is very disappointing to see some Government

members failing to support this bill which would give workers greater protections from employers who intentionally take their wages.

Although some migrant workers are already covered for wage-theft type provisions in the Immigration Act 2009, making wage-theft a criminal offence under which all employers and employees are covered would add greater protection to migrant workers as they would still be covered for wage-theft even after they transition onto permanent visas or no longer hold a temporary class visa. It would also give the same protections to all New Zealanders, regardless of migration status.

The *mens rea* or intentional requirement of this bill is also important. This bill would not criminalise good employers, or employers that make a mistake with payroll. We recognise most employers would never intentionally take their employees' hard-earned wages, but unfortunately a small minority do. Currently, the repercussions they face in relation to this are, at best, actions in the civil courts. This bill would have addressed this issue and remedied this unfairness.

Appendix

Committee process

The Crimes (Theft by Employer) Amendment Bill was referred to the Education and Workforce Committee of the 53rd Parliament on 30 August 2023. The committee called for submissions on the bill with a closing date of 12 October 2023.

The bill was reinstated with this committee in the 54th Parliament on 6 December 2023. We received and considered submissions from 13 interested groups and individuals. We heard oral evidence from 5 submitters at hearings in Wellington and via videoconference. We also heard evidence from Camilla Belich and Ibrahim Omer.

Advice on the bill was provided by the Ministry of Justice and the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Katie Nimon (Chairperson)

Carl Bates

Camilla Belich (from 13 December 2023)

Mike Butterick

Fa'anānā Efeso Collins (21 February 2024)

Reuben Davidson (until 13 December 2023)

Grant McCallum

Dr Parmjeet Parmar

Hon James Shaw (from 6 March to 27 March 2024)

Hon Jan Tinetti

Teanau Tuiono (until 21 February 2024)

Hon Phil Twyford

Dr Lawrence Xu-Nan (from 27 March 2024)

Related resources

The documents received as advice and evidence are available on the Parliament website.

Crimes (Theft by Employer) Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Camilla Belich

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Crimes (Theft by Employer) Amendment Act **2022**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Crimes Act 1961.

3A Section 2 amended (Interpretation)

In section 2(1), definition of crime involving dishonesty, paragraph (b), before “267”, insert “**220AA**.”. 10

4 New section 220AA inserted (Theft by employer)

Before section 220A, insert:

220AA Theft by employer

- (1) This section applies to a person (A) who—
- (a) employs another person (B); and
 - (b) is required to pay any money owed to B in relation to the employment, ~~whether under—~~ 5
 - (i) ~~under an employment agreement between A and B~~ (whether or not the agreement is in writing); or
 - (ii) ~~as otherwise required under law an Act~~ (for example, ~~under the Holidays Act 2003, the Minimum Wage Act 1983, or the Wages Protection Act 1983~~). 10
- (2) If A intentionally fails to pay the money to B, A commits theft and is liable,—
- (a) if A is an individual, to imprisonment for a term not exceeding 1 year, a fine not exceeding \$5,000, or both;
 - (b) in any other case, to a fine not exceeding \$30,000.
- (3) In this section,— 15
- employ**, in relation to a homeworker, includes engage, and **employment** has a corresponding meaning
- employment agreement** has the same meaning as in section 5 of the Employment Relations Act 2000
- homeworker** has the same meaning as in section 5 of the Employment Relations Act 2000. 20

5 Section 223 amended (Punishment of theft)

In section 223, before “220A”, insert “**220AA** or”.

Legislative history

6 April 2023
30 August 2023

Introduction (Bill 245–1)
First reading and referral to Education and Workforce Committee