



New South Wales

Tax Administration Amendment (Combating Wage Theft) Bill 2021

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to provide for measures to deter the underpayment of wages, including by allowing—
 - (i) the Chief Commissioner to reassess payroll tax liabilities more than 5 years after an initial assessment in certain circumstances of underpayment of wages, and
 - (ii) tax officers to disclose information to the Commonwealth Fair Work Ombudsman to assist in investigations of underpayment of wages and to the Secretary of the Department of Premier and Cabinet to assist in investigations of breaches of the *Long Service Leave Act 1995*, and
 - (iii) tax officers to disclose certain information about an employer in certain circumstances of underpayment of wages,
- (b) to increase penalties, or introduce higher penalties for second or subsequent offences, for certain offences,
- (c) to create an offence of knowingly evading or attempting to evade tax.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Taxation Administration Act 1996 No 97

Schedule 1[1] allows the Chief Commissioner to make a reassessment of a taxpayer's tax liability more than 5 years after the initial assessment in certain circumstances where there has been underpayment of wages to an employee by the taxpayer. A tax liability may be reassessed if—

- (a) an investigation relating to the taxpayer by the Commonwealth Fair Work Ombudsman under the *Fair Work Act 2009* of the Commonwealth has been finalised and has found underpayment of wages, or
- (b) the Chief Commissioner is satisfied that the taxpayer has underpaid wages.

In either case, a reassessment may only be carried out if the underpayment of wages has resulted in the taxpayer's liability to pay payroll tax under the *Payroll Tax Act 2007* not having been assessed or assessed at a lower amount than the Chief Commissioner would otherwise have assessed

Schedule 1[2]–[5] increase the penalties for offences against sections 48–54 of the *Taxation Administration Act 1996* relating to record keeping, offences against sections 55 and 56 relating to false or misleading, or deliberate omission of, information, the offence against section 57 of failure to lodge documents and the offence against section 58 of falsifying or concealing identity. The amendments also provide for higher penalties for a second or subsequent offence against sections 50, 55 and 56. **Schedule 1[10]** provides that the higher penalties do not apply to offences against those sections that were committed before the commencement of the proposed Act.

Schedule 1[6] creates an offence of knowingly evading or attempting to evade tax, with a maximum penalty of \$110,000 or 2 years imprisonment, or both.

Schedule 1[7] inserts definitions into Part 9, Division 3 of *employer*, *fair work instrument*, *Fair Work Ombudsman*, *safety net contractual entitlement* and *wages*.

Schedule 1[8] allows a tax officer to disclose information obtained under or in relation to the administration of a taxation law to the Fair Work Ombudsman to assist the Fair Work Ombudsman to perform certain functions under the *Fair Work Act 2009* of the Commonwealth and to the Secretary of the Department of Premier and Cabinet for the purpose of investigating breaches of the *Long Service Leave Act 1995*.

Schedule 1[9] allows tax officers to disclose information about employers obtained under or in relation to the administration of a taxation law in circumstances where there has been underpayment of wages by the employer that has resulted in the employer's liability to pay payroll tax under the *Payroll Tax Act 2007* not having been assessed or assessed at a lower amount than would otherwise have been assessed had the underpayment not occurred. The disclosure must be in accordance with guidelines issued by the Minister for Finance and Small Business.



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Tax Administration Amendment (Combating Wage Theft) Bill 2021

No. _____, 2021

A Bill for

An Act to amend the *Taxation Administration Act 1996* to provide for measures to deter the underpayment of wages by employers, to increase penalties for certain offences and to create an offence of tax evasion; and for other purposes.

The Legislature of New South Wales enacts—

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1 Name of Act

2

This Act is the *Tax Administration Amendment (Combating Wage Theft) Act 2021*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Taxation Administration Act 1996	1
	No 97	2
[1] Section 9 Reassessment		3
	Insert at the end of section 9(3)(d)—	4
	, or	5
	(e) the reassessment is of a tax liability of a taxpayer based on a return under the <i>Payroll Tax Act 2007</i> if—	6
	(i) the conditions set out in section 83A to enable a disclosure to be made under that section in relation to the taxpayer have been met, or	7
	(ii) the Chief Commissioner is satisfied of the following—	8
	(A) the taxpayer has underpaid wages to an employee,	9
	(B) as a result of that underpayment, the taxpayer’s liability to pay payroll tax under the <i>Payroll Tax Act 2007</i> was not assessed or assessed at a lower amount than would otherwise have been assessed had the underpayment not occurred.	10
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[2] Sections 48(1), 49(2), 51, 52, 53(1) and 57		18
	Omit “100 penalty units” wherever occurring. Insert instead “250 penalty units”.	19
[3] Section 50 Inclusion of false or misleading information		20
	Omit “Maximum penalty: 100 penalty units.”. Insert instead—	21
	Maximum penalty—	22
	(a) 500 penalty units for a first offence, or	23
	(b) 1,000 penalty units for a second or subsequent offence.	24
[4] Sections 54 and 58		25
	Omit “100 penalty units” wherever occurring. Insert instead “500 penalty units”.	26
[5] Sections 55 and 56		27
	Omit “Maximum penalty: 100 penalty units.” wherever occurring. Insert instead—	28
	Maximum penalty—	29
	(a) 500 penalty units for a first offence, or	30
	(b) 1,000 penalty units or 2 years imprisonment, or both, for a second or subsequent offence.	31
		32
[6] Section 58A		33
	Insert after section 58—	34
58A Tax evasion		35
	A person must not, by act or omission, knowingly evade or attempt to evade tax.	36
	Maximum penalty—1,000 penalty units or 2 years imprisonment, or both.	37
		38
[7] Section 81A		39
	Insert before section 81 in Part 9, Division 3—	40

81A	Definitions	1
	In this Division—	2
	<i>employer</i> and <i>wages</i> have the same meanings as in the <i>Payroll Tax Act 2007</i> .	3
	<i>fair work instrument</i> and <i>safety net contractual entitlement</i> have the same meanings as in the <i>Fair Work Act 2009</i> of the Commonwealth.	4
	<i>Fair Work Ombudsman</i> means the Fair Work Ombudsman established under the <i>Fair Work Act 2009</i> of the Commonwealth.	5
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[8]	Section 82 Permitted disclosures—to particular persons	8
	Omit “or” from the end of section 82(k)(xx). Insert after section 82(k)(xx)—	9
	(xxi) the Fair Work Ombudsman for the purpose of assisting the Fair Work Ombudsman to perform the functions of the Fair Work Ombudsman under the <i>Fair Work Act 2009</i> of the Commonwealth, section 682(1)(b), (c) and (d).	10
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	(xxii) the Secretary of the Department of Premier and Cabinet for the purpose of investigating a breach of the <i>Long Service Leave Act 1995</i> , or	14
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		16
[9]	Section 83A	17
	Insert after section 83—	18
83A	Permitted disclosures—underpayment of wages	19
(1)	A tax officer may disclose information about an employer obtained under or in relation to the administration of a taxation law in accordance with, and in the circumstances specified in, this section.	20
		21
		22
(2)	A disclosure may be made if an investigation in relation to the employer by the Fair Work Ombudsman carried out under the <i>Fair Work Act 2009</i> of the Commonwealth, Chapter 5, Part 5–2, Division 3—	23
		24
		25
(a)	has been finalised, and	26
(b)	has found that the employer has—	27
(i)	not complied with the <i>Fair Work Act 2009</i> of the Commonwealth or a fair work instrument, or	28
		29
(ii)	has contravened a safety net contractual entitlement, and	30
(c)	the non-compliance or contravention has resulted in an underpayment of wages to an employee, and	31
		32
(d)	as a result of that underpayment, the employer’s liability to pay payroll tax under the <i>Payroll Tax Act 2007</i> was not assessed or assessed at a lower amount than would otherwise have been assessed had the underpayment not occurred.	33
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(3)	A disclosure may be made even where an investigation mentioned by subsection (2) has not been carried out if the Chief Commissioner is satisfied of the following—	37
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(a)	the employer has underpaid wages to an employee,	40
(b)	as a result of that underpayment, the employer’s liability to pay payroll tax under the <i>Payroll Tax Act 2007</i> was not assessed or assessed at a lower amount than would otherwise have been assessed had the underpayment not occurred.	41
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(4)	The Minister for Finance and Small Business must issue guidelines for the exercise of the discretion to disclose information under this section.	45
		46

(5)	The guidelines—	1
(a)	may be amended, revoked or replaced from time to time, and	2
(b)	must be published on a website of Revenue NSW, the Department of Customer Service or another appropriate website as determined by the Minister.	3 4 5
(6)	A disclosure must be made in accordance with the guidelines.	6
(7)	Without limiting subsection (4), the guidelines may include guidelines about the following—	7 8
(a)	when an investigation by the Fair Work Ombudsman is finalised,	9
(b)	what information may be disclosed,	10
(c)	where and for how long the information is to be published,	11
(d)	the matters that a tax officer is to consider in exercising a discretion to disclose information, including, but not limited to—	12 13
(i)	whether the underpayment of wages is on a significant scale or has a significant impact on an employee or a group of employees or the community, and	14 15 16
(ii)	whether there have been previous instances of the employer underpaying wages, and	17 18
(iii)	whether the underpayment of wages by the employer is systemic, and	19 20
(iv)	the employer's history of compliance with taxation laws.	21
[10]	Schedule 1 Savings, transitional and other provisions	22
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	23
Part	Provisions arising from enactment of Tax Administration Amendment (Combating Wage Theft) Act 2021	24 25 26
	Penalties for offences committed before commencement of Tax Administration Amendment (Combating Wage Theft) Act 2021	27 28
(1)	The maximum penalty that applied to an offence against section 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 or 58 before the sections were amended by the amending Act continue to apply to an offence committed before the commencement of the amending Act.	29 30 31 32
(2)	In this clause—	33
	<i>amending Act</i> means the <i>Tax Administration Amendment (Combating Wage Theft) Act 2021</i> .	34 35