



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.