

# Ai GROUP

NSW Legislative Council's Portfolio Committee No. 1  
– Premier and Finance

Inquiry into the Tax Administration Amendment  
(Combating Wage Theft) Bill 2021

20 MAY 2021

**Ai**  
GROUP

## About Australian Industry Group

The Australian Industry Group (Ai Group®) is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for nearly 150 years.

Together with partner organisations we represent the interests of more than 60,000 businesses employing more than 1 million staff. Our members are small and large businesses in sectors including manufacturing, construction, engineering, transport & logistics, labour hire, mining services, the defence industry, civil airlines and ICT.

Our vision is for *thriving industries and a prosperous community*. We offer our membership high quality services, strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

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## Introduction

Ai Group welcomes the opportunity to comment on the Inquiry into the *Tax Administration Amendment (Combating Wage Theft) Bill 2021* (the Bill).

While we have important concerns with the Bill, we note at the outset that Ai Group regards the theft of wages (properly defined) and the evasion of taxes as offensive and we support strong, targeted legislative measures and penalties and effective enforcement. While these issues go to general issues of fairness for taxpayers and employees, they also relate to the fairness for businesses who want to see that their competitors do not obtain an advantage by evading taxes or deliberately underpaying their employees.

## Summary of Recommendations

Ai Group has three recommendations in response to the Tax Administration Amendment (Combating Wage Theft) Bill 2021.

The case for an increase in general tax penalties of the size proposed in the Bill has not been made. We also submit that a case has not been made for the creation of the proposed new offence of tax evasion. There may well be merit in an alternative bill that either increased the penalty points that applied to the relevant offences (by about 80 per cent) or that increased the monetary value of a penalty point by 80 per cent. If such a bill were to be pursued, in the interests of transparency and following the principle of calling a spade a spade, it could be titled the *Tax Administration Amendment (Increase in Tax Penalties) Bill 2021*.

In light of the fact that payroll tax liabilities relating to wages theft can already be reassessed beyond the five-year period, Ai Group submits that the additional scope for extending the period of reassessment proposed by the Bill is not needed.

We submit that the distinction between wages theft and inadvertent wages underpayment should be reflected in the *Tax Administration Amendment (Combating Wage Theft) Bill 2021* and the provisions of the Bill that relate to naming of taxpayers and the sharing of information should be rewritten to ensure they only apply in the event of a deliberate underpayment of wages.

## Submission

Although the Bill is called the *Tax Administration Amendment (Combating Wage Theft) Bill 2021*, it is not only or even mainly related to combating wages theft (properly defined) nor is it only or even mainly related to the broader issue of the underpayment of wages.

The major changes proposed in the Bill relate to increases in the severity of penalties available under the *Taxation Administration Act 1996* and to the creation of a new offence of tax evasion under the same Act. Neither measure is specifically related to the theft of wages or to taxation

consequences arising from the theft of wages. Both the changed penalties and the new offence would have general application to taxation in New South Wales.

Severed from the emotive connection with the theft of wages, there is no supporting evidence of a need to increase penalties under the *Taxation Administration Act* nor of the need to create a new offence. There is no evidence presented of an increase in non-compliance with NSW's taxation laws and there is no evidence presented of an increase in tax evasion that would justify the new offence.

In the Second Reading Speech (SRS) the Minister for Finance and Small Business<sup>1</sup> referred to the greater severity of penalties in Victoria and to the fact that penalties in NSW have not increased since 1996. However, no evidence was presented that non-compliance and tax evasion is greater in NSW than it is in Victoria notwithstanding the difference in penalties.

Further, while the Minister's comment about the time since penalties were last increased could be implied to be an argument that penalties would need to rise in nominal terms to retain their effectiveness, the proposed magnitudes of the increases in penalties are several times greater than the levels of increase that would retain their value in real terms. The Consumer Price Index increased from 66.2 in March 1996 to 117.9 in March 2021, a rise of 78 per cent. In contrast, as the Minister pointed out in the SRC, the increases proposed in the Bill range from 250 per cent to 500 per cent. These proposed increases in penalties are between 3.2 and 6.4 times greater than would be required to maintain their real value.

**We submit that the case for an increase in penalties of the size proposed has not been made. We also submit that a case has not been made for the creation of the proposed new offence of tax evasion. There may well be merit in an alternative bill that either increased the penalty points that applied to the relevant offences (by about 80 per cent) or that increased the monetary value of a penalty point by 80 per cent. If such a bill were to be pursued, in the interests of transparency and following the principle of calling a spade a spade, it could be titled the *Tax Administration Amendment (Increase in Tax Penalties) Bill 2021*.**

The remaining provisions in the Bill relate to:

- Extending the period of re-assessment of payroll tax beyond five years; and
- Naming taxpayers and Information sharing.

Before looking at each of these, we note as a general point that as the Bill is currently drafted, these provisions do not relate specifically to wages theft (properly defined) but to the much broader issue of the underpayment of wages.

"Theft" has a specific meaning which is the taking of another person's property or services or money without that person's permission or consent with the intent to deprive the rightful owner of it.<sup>2</sup> In sharp contrast, the range of circumstances related to remaining provisions of the Bill

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<sup>1</sup> <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-85486'/HANSARD-1820781676-85486>

<sup>2</sup> See for example <https://en.wikipedia.org/wiki/Theft> . Encyclopedia Britannica (see [www.britannica.com/topic/theft](http://www.britannica.com/topic/theft)) has a similar definition which also includes the element of intent.

relate in the main to underpayments where there is no intent to deprive the employee or employees of their legal wages. These underpayments are not fairly characterised as “theft”: they arise from mistakes or confusion often associated with the excessive complexity of arrangements governing wages in Australia.

In the SRS, the Minister drew a distinction between wage underpayment that is deliberate and wage underpayment that is inadvertent. In contemplating the ministerial guidelines that would govern the naming provisions, the Minister indicated in the SRS that the naming provisions would not be fair if they meant that a business named “has made an honest mistake in trying to adhere to the relevant, but often complex, Commonwealth awards framework”.

Using the Minister’s terms, deliberate wage underpayment would be appropriately classified as “wages theft” as it involves intent. Inadvertent underpayment would not be wages theft as it does not involve intent.

Unfortunately, this important distinction is not reflected in the Bill which would apply indiscriminately to wage underpayment whether deliberate or inadvertent.

#### *Extending the re-assessment period*

In the SRS, the Minister made the following comment:

*at present Revenue NSW can only reassess a tax liability within five years of the initial assessment, except in very limited circumstances. One exception is where the taxpayer did not disclose all the facts and circumstances affecting its liability to Revenue NSW. If wage underpayment is uncovered five years or more after the initial payroll tax assessment, Revenue NSW can only reassess payroll tax on those unpaid wages where it can establish that the wage theft was deliberate.*

Apart from the misuse of the term “wages theft” in the last sentence, the Minister made clear that, under existing provisions of the *Taxation Administration Act 1996*, if a wage underpayment is deliberate – that is if it is wages theft properly defined, Revenue NSW already has the ability to reassess payroll tax liabilities.

**In light of the fact that payroll tax liabilities relating to wages theft can already be reassessed beyond the five-year period, Ai Group submits that the additional scope for extending the period of reassessment is not needed.**

#### *Naming Taxpayers and Information Sharing*

As indicated at the outset, Ai Group supports targeted measures to address wages theft and tax evasion. However, as it is currently drafted, there is a clear risk the Bill would cause the naming of taxpayers and the sharing of information in circumstances when there was an inadvertent underpayment of wages. The Minister’s suggestion in the SRS that ministerial guidelines would be needed to ensure the naming provisions did not lead to the naming of taxpayer who inadvertently underpaid wages is clear evidence of this risk.

**Ai Group submits that the distinction between wages theft and inadvertent wages underpayment should be reflected in the *Tax Administration Amendment (Combating Wage Theft) Bill 2021* and the provisions of the Bill that relate to naming of taxpayers and the sharing of information should be rewritten to ensure they only applied in the event of a deliberate underpayment of wages.**

Confining the Bill so that it had application in the event of a deliberate underpayment of wages, would confine its application to wages theft properly defined and would align the Bill with its name.



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