



Fair Work Amendment (Corrupting Benefits) Act 2017

No. 84, 2017

An Act to amend the *Fair Work Act 2009*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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An Act to amend the *Fair Work Act 2009*, and for related purposes

[Assented to 16 August 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Fair Work Amendment (Corrupting Benefits) Act 2017*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	16 August 2017
2. Schedules 1 and 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to corrupting benefits

Fair Work Act 2009

1 At the end of section 6

Add:

- (8) Part 3-7 deals with offences in relation to corrupting benefits.

2 Section 12

Insert:

cash or in kind payment: see subsection 536F(4).

prohibited beneficiary: see subsection 536F(5).

registered organisations officer or employee: see section 536E.

relevant affairs, in relation to a registered organisations officer or employee, means the affairs of:

- (a) if the registered organisations officer or employee is an officer or employee of an organisation—the organisation and any branch of the organisation, including the affairs of the members of the organisation or any of those branches; or
- (b) if the registered organisations officer or employee is an officer or employee of a branch of an organisation—the branch, including the affairs of the members of the branch.

3 At the end of Chapter 3

Add:

Part 3-7—Corrupting benefits

Division 1—Introduction

536A Guide to this Part

This Part is about corrupting benefits provided to or in relation to organisations.

Division 2 prohibits benefits intended to influence an officer or employee of an organisation.

Division 3 prohibits national system employers providing cash or in kind payments to employee organisations and related persons, other than certain legitimate benefits specified in the Division.

536B Meanings of employee and employer

In this Part, *employee* and *employer* have their ordinary meanings.

536C Concurrent operation of State and Territory laws

- (1) This Part does not exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.
- (2) Without limiting subsection (1), this Part does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that:
 - (a) the law makes an act or omission:
 - (i) an offence; or
 - (ii) subject to a civil penalty; and
 - (b) that (or any similar) act or omission is also an offence against a provision of this Part.
- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following, in relation to the offence or civil penalty:
 - (a) provides for a penalty that differs from the penalty provided for in this Part;

- (b) provides for fault elements that differ from the fault elements applicable to the offence created by this Part;
- (c) provides for defences or exceptions that differ from the defences or exceptions applicable to the offence created by this Part.

536CA Dishonesty

- (1) For the purposes of this Part, **dishonest** means:
 - (a) dishonest according to the standards of ordinary people; and
 - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (2) In a prosecution for an offence against this Part, the determination of dishonesty is a matter for the trier of fact.

Division 2—Giving, receiving or soliciting corrupting benefits

536D Giving, receiving or soliciting a corrupting benefit

Giving a corrupting benefit

- (1) A person (the **defendant**) commits an offence if:
 - (a) the defendant dishonestly:
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
 - (b) the defendant does so with the intention of influencing a registered organisations officer or employee (who may be the other person):
 - (i) in the performance of his or her duties or functions as such an officer or employee; or
 - (ii) in the exercise of his or her powers or performance of his or her functions under this Act or the Registered Organisations Act; or

- (iii) to give an advantage of any kind in connection with the relevant affairs, which would not be legitimately due, to the defendant, a spouse (within the meaning of the Registered Organisations Act) or associated entity of the defendant, or a person who has a prescribed connection with the defendant.

Penalty:

- (a) for an individual—imprisonment for 10 years or 5,000 penalty units, or both; or
- (b) for a body corporate—25,000 penalty units.

Receiving or soliciting a corrupting benefit

(2) A person (the **defendant**) commits an offence if:

- (a) the defendant dishonestly:
 - (i) requests (whether or not expressly and whether or not by threats); or
 - (ii) receives or obtains; or
 - (iii) agrees to receive or obtain;

a benefit from a person (the **provider**) for the defendant or another person; and

- (b) the defendant does so with the intention that, or the intention that the provider believes that, the receipt, or expectation of the receipt, of the benefit will influence a registered organisations officer or employee (who may be the defendant):
 - (i) in the performance of his or her duties or functions as such an officer or employee; or
 - (ii) in the exercise of his or her powers or performance of his or her functions under this Act or the Registered Organisations Act; or
 - (iii) to give an advantage of any kind in connection with the relevant affairs, which would not be legitimately due, to the provider, a spouse (within the meaning of the Registered Organisations Act) or associated entity of the provider, or a person who has a prescribed connection with the provider.

Penalty:

- (a) for an individual—imprisonment for 10 years or 5,000 penalty units, or both; or
- (b) for a body corporate—25,000 penalty units.

No need for actual influence etc.

- (3) For the purposes of paragraphs (1)(b) and (2)(b):
 - (a) the defendant's intention does not need to be in relation to a particular registered organisations officer or employee; and
 - (b) the defendant's intention does not need to be in relation to a registered organisations officer or employee performing or exercising duties, functions or powers in a particular way, or giving a particular advantage to a particular person; and
 - (c) the provider mentioned in subsection (2) does not need to actually believe anything; and
 - (d) it is not necessary that any person actually be influenced.

Giving an advantage which would not be legitimately due

- (4) In a prosecution for an offence against subsection (1) or (2), the determination of whether an advantage would not be legitimately due is a matter for the trier of fact.
- (5) For the purposes of subparagraphs (1)(b)(iii) and (2)(b)(iii), an advantage may be given in any way, including by doing or not doing a thing, or causing or influencing another person to do or not do a thing.
- (6) In working out whether an advantage would not be legitimately due to a person, disregard:
 - (a) whether the advantage might be, or be perceived to be, customary, necessary or required in the situation; and
 - (b) the value of the advantage; and
 - (c) any official tolerance of the advantage.

Meaning of benefit in this section

- (7) In this section:
benefit includes any advantage and is not limited to property.

536E Meaning of registered organisations officer or employee

Each of the following is a *registered organisations officer or employee*:

- (a) an officer (within the meaning of the Registered Organisations Act) of an organisation or branch of an organisation;
- (b) an employee of an organisation or branch of an organisation.

Division 3—Cash or in kind payments to employee organisations etc.

536F Giving a cash or in kind payment

Giving a cash or in kind payment

- (1) A person (the *defendant*) commits an offence if:
 - (a) the defendant is a national system employer other than an employee organisation; and
 - (b) the defendant:
 - (i) provides a cash or in kind payment to another person; or
 - (ii) causes a cash or in kind payment to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a cash or in kind payment to another person; or
 - (iv) causes an offer of the provision of a cash or in kind payment, or a promise of the provision of a cash or in kind payment, to be made to another person; and
 - (c) the other person is an employee organisation or a prohibited beneficiary in relation to an employee organisation; and
 - (d) the defendant, a spouse (within the meaning of the Registered Organisations Act) or associated entity of the defendant, or a person who has a prescribed connection with the defendant, employs a person who is, or is entitled to be, a member of the organisation and whose industrial interests the organisation is entitled to represent.

Penalty:

- (a) for an individual—imprisonment for 2 years or 500 penalty units, or both; or

- (b) for a body corporate—2,500 penalty units.
- (3) Subsection (1) does not apply to the following cash or in kind payments:
- (a) a payment to the organisation:
 - (i) made by deduction from the wages of an employee of the defendant who has agreed in writing to become a member of the organisation; and
 - (ii) made for a membership fee payable by the employee;
 - (b) a benefit provided and used for the sole or dominant purpose of benefiting the defendant’s employees, or the defendant’s former employees in relation to their former employment;
 - (c) a gift or contribution deductible under section 30-15 of the *Income Tax Assessment Act 1997* and used in accordance with the law;
 - (ca) a benefit of nominal value (meaning no more than 2 penalty units) associated with travel or hospitality during consultation, negotiation or bargaining;
 - (cb) a benefit of nominal value (meaning no more than 2 penalty units) that is:
 - (i) a token gift, an event invitation or a similar benefit; and
 - (ii) given in accordance with common courteous practice among employers and organisations;
 - (d) a payment made, at no more than market value, for goods or services supplied to the defendant in the ordinary course of the organisation’s business;
 - (e) a payment made under or in accordance with a law of the Commonwealth, or a law of a State or Territory;
 - (f) a benefit provided in accordance with an order, judgment or award of a court or tribunal, or in settlement of a matter before the FWC or a genuine legal dispute;
 - (g) a non-corrupting benefit prescribed by, or provided in circumstances prescribed by, the regulations.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Meaning of cash or in kind payment

- (4) A ***cash or in kind payment*** is a benefit that is:
- (a) in cash or any other money form; or

- (b) goods or services; or
- (c) prescribed by the regulations for the purposes of this paragraph.

Meaning of prohibited beneficiary

- (5) A person is a **prohibited beneficiary** in relation to an employee organisation if the person is any of the following:
 - (a) an entity controlled by the organisation;
 - (b) a registered organisations officer or employee in relation to the organisation;
 - (c) a spouse of, or entity controlled by, such an officer or employee;
 - (d) a person or entity to whom the organisation or a prohibited beneficiary of the organisation requests or directs the defendant to provide a cash or in kind payment;
 - (e) a person who has a prescribed connection with the organisation or a prohibited beneficiary of the organisation.
- (6) In subsection (5), **control**, **entity** and **spouse** have the same meanings as in the Registered Organisations Act.

Meaning of national system employer

- (7) Sections 30D and 30N do not apply to extend the meaning of **national system employer** in this section.

536G Receiving or soliciting a cash or in kind payment

- (1) A person (the **defendant**) commits an offence if:
 - (a) the defendant:
 - (i) requests (whether or not expressly and whether or not by threats); or
 - (ii) receives or obtains; or
 - (iii) agrees to receive or obtain;a cash or in kind payment from a person (the **provider**) for the defendant or another person; and
 - (b) the defendant is an employee organisation or an officer (within the meaning of the Registered Organisations Act) or employee of an employee organisation; and

- (c) the provider is a national system employer other than an employee organisation; and
- (d) the provider, a spouse (within the meaning of the Registered Organisations Act) or associated entity of the provider, or a person who has a prescribed connection with the provider, employs a person who is, or is entitled to be, a member of the organisation and whose industrial interests the organisation is entitled to represent.

Penalty:

- (a) for an individual—imprisonment for 2 years or 500 penalty units, or both; or
 - (b) for a body corporate—2,500 penalty units.
- (2) Subsection (1) does not apply to a cash or in kind payment mentioned in subsection 536F(3).

536H Implied freedom of political communication

- (1) This Division does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.
- (2) Subsection (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901*.

Schedule 2—Amendments relating to disclosure by organisations and employers

Fair Work Act 2009

1 Section 12

Insert:

related party has the same meaning as in the Registered Organisations Act.

section 179A disclosable benefit: see subsection 179A(4).

section 179 disclosable benefit: see subsection 179(6).

2 Before section 180

Insert:

179 Disclosure by organisations that are bargaining representatives

(1) If:

- (a) an organisation is a bargaining representative for a proposed enterprise agreement that is not a greenfields agreement; and
- (b) the organisation is not an employer that will be covered by the agreement; and
- (c) as a direct or indirect consequence of the operation of one or more terms of the agreement (the *beneficial terms*), the organisation or a person mentioned in subsection (2) will, or can reasonably be expected to, receive or obtain (directly or indirectly) a section 179 disclosable benefit (each such person is a *beneficiary*);

the organisation must take all reasonable steps to ensure that, in the time required by subsection (3), each employer that will be covered by the agreement is given a document in accordance with subsection (4).

Note: This subsection is a civil remedy provision (see Part 4-1).

- (2) For the purposes of paragraph (1)(c), the persons are any of the following:
- (a) a related party of the organisation (other than a related party prescribed by the regulations);
 - (b) a person or body prescribed by the regulations for the purposes of this paragraph.
- (3) The document must be given to the employers no later than the end of the fourth day of the access period referred to in subsection 180(4) for the agreement.
- (4) The document must:
- (a) itemise the beneficial terms; and
 - (b) describe the nature and (as far as reasonably practicable) amount of each section 179 disclosable benefit in relation to each beneficiary; and
 - (c) name each beneficiary; and
 - (d) be in accordance with any other requirements prescribed by the regulations for the purposes of this paragraph; and
 - (e) be given in a manner (if any) prescribed by the regulations.
- (5) An organisation that gives a document under subsection (1) must not knowingly or recklessly make a false or misleading representation in the document.
- Note: This subsection is a civil remedy provision (see Part 4-1).
- (6) A **section 179 disclosable benefit** is any financial benefit, other than a financial benefit that is:
- (a) payable to an individual as an employee covered by the agreement; or
 - (b) payment of a membership fee for membership of an organisation; or
 - (c) prescribed by the regulations for the purposes of this paragraph.

179A Disclosure by employers

- (1) If:
- (a) an employer will be covered by a proposed enterprise agreement that is not a greenfields agreement; and

- (b) as a direct or indirect consequence of the operation of one or more terms of the agreement (the **beneficial terms**), the employer or a person mentioned in subsection (2) will, or can reasonably be expected to, receive or obtain (directly or indirectly) a section 179A disclosable benefit (each such person is a **beneficiary**);
the employer must prepare a document in accordance with subsection (3).
- (2) For the purposes of paragraph (1)(b), the persons are any of the following:
- (a) an associated entity of the employer (other than an associated entity prescribed by the regulations);
 - (b) a person or body prescribed by the regulations for the purposes of this paragraph.
- (3) The document must:
- (a) itemise the beneficial terms; and
 - (b) describe the nature and (as far as reasonably practicable) amount of each section 179A disclosable benefit in relation to each beneficiary; and
 - (c) name each beneficiary; and
 - (d) be in accordance with any other requirements prescribed by the regulations for the purposes of this paragraph.
- (4) A **section 179A disclosable benefit** is any financial benefit, other than a financial benefit that is:
- (a) received or obtained in the ordinary course of the employer's business; or
 - (b) prescribed by the regulations for the purposes of this paragraph.

3 After subsection 180(4)

Insert:

Employees must be given copy of disclosure documents etc.

- (4A) If an organisation gives the employer a document under section 179 by the end of the fourth day of the access period for the agreement, the employer must take all reasonable steps to ensure that the relevant employees:
-

- (a) are given a copy of the document as soon as practicable after it was given to the employer; or
- (b) are given access to a copy of the document as soon as practicable after it was given to the employer and have access to that copy throughout the remainder of the access period for the agreement.

Note: This subsection is a civil remedy provision (see Part 4-1).

(4B) If the employer is required to prepare a document under section 179A, the employer must take all reasonable steps to ensure that the relevant employees:

- (a) are given a copy of the document by the end of the fourth day of the access period for the agreement; or
- (b) are given access to a copy of the document by the end of that fourth day and have access to that copy throughout the remainder of the access period for the agreement.

Note: This subsection is a civil remedy provision (see Part 4-1).

(4C) The employer must not knowingly or recklessly make a false or misleading representation in the document that the relevant employees are given a copy of or access to under subsection (4B).

Note: This subsection is a civil remedy provision (see Part 4-1).

4 After section 188

Insert:

188A Disclosure documents

Failure by an organisation to comply with section 179 (disclosure by organisations), or by an employer to comply with section 179A or subsection 180(4A), (4B) or (4C) (disclosure by employers), in relation to an agreement:

- (a) does not amount to reasonable grounds for believing that the agreement has not been genuinely agreed to by employees; and
- (b) is not otherwise relevant to approval by the FWC of the agreement.

5 Subsection 539(2) (before table item 6)

Insert:

Schedule 2 Amendments relating to disclosure by organisations and employers

5A	179(1) 179(5)	(a) an employee; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units
5B	180(4A) 180(4B) 180(4C)	(a) an employee; (b) a bargaining representative for the proposed enterprise agreement; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court	60 penalty units

6 In the appropriate position in Schedule 1

Insert:

**Part 6—Amendments made by the Fair Work
Amendment (Corrupting Benefits) Act
2017**

30 Disclosure by organisations and employers

The amendments of Subdivision A of Division 4 of Part 2-4 made by Schedule 2 to the *Fair Work Amendment (Corrupting Benefits) Act 2017* apply in relation to a proposed enterprise agreement for which the access period under subsection 180(4) begins on or after the commencement of this Part.

*[Minister's second reading speech made in—
House of Representatives on 22 March 2017
Senate on 13 June 2017]*

(46/17)

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