



## Corrupting benefits offences

The *Fair Work Amendment (Corrupting Benefits) Act 2017 (the Amendment Act)* amended the *Fair Work Act 2009 (the Act)* to create new offences in relation to corrupting benefits and to add new disclosure rules which apply during enterprise bargaining.

This fact sheet provides an overview of the new offences in relation to corrupting benefits in the Act. If you require information about the new disclosure rules which apply during enterprise bargaining, see our fact sheet 'Disclosure requirements for bargaining representatives' (FS 013), available on our [website](#).

### **New Part 3-7, Division 2: corrupting benefits offences**

#### **Giving a corrupting benefit (s. 536D(1))**

A person must not dishonestly provide, cause the provision of, offer to provide, or cause an offer to provide a benefit to another person with the intention of influencing an officer or employee of a registered organisation.

#### **Receiving or soliciting a corrupting benefit (s. 536D(2))**

A person must not dishonestly request, receive, obtain or agree to receive or obtain a benefit from another person:

- with the intention that the receipt, or expectation of receipt, of the benefit will influence an officer or employee of a registered organisation
- with the intention that the provider believes that the receipt, or expectation of receipt, of the benefit will influence an officer or employee of a registered organisation.

#### **What penalties apply?**

An individual who is found to be in breach of either ss. 536D(1) or 536D(2) may be imprisoned for a period of up to 10 years and/or may be fined a maximum of 5000 penalty units. A body corporate may be fined a maximum of 25 000 penalty units.

#### **What is a 'benefit'?**

The term 'benefit' is defined widely in s. 536D(7) of the Act as any advantage and is not limited to property.



## What is 'influence'?

The intention to influence an officer or employee of a registered organisation includes:

- in the performance of their duties or functions as an officer or employee
- in the exercise of their powers or performance of their functions under the Act or the *Fair Work (Registered Organisations) Act 2009 (the RO Act)*
- giving an advantage of any kind which would not be legitimately due to the person, their spouse or an associated entity of the person.

However, s. 536D(3) states that the intention to influence does not need to:

- be in relation to a particular organisation's officer or employee
- be in relation to an officer or employee using their powers or functions, or performing their duties in a particular manner or giving a particular advantage to a particular person
- result in a person actually being influenced.

## New Part 3-7, Division 3: cash or in kind payments

### Giving, receiving or soliciting a cash or in kind payment (ss. 536F and 536G)

If a national system employer (or their spouse or an associated entity) employs a person whose industrial interests a union is entitled to represent, it is an offence for:

- the employer to provide, cause the provision of, offer to provide, or cause an offer to provide a cash or in kind payment to the union (or its prohibited beneficiaries)
- the union, or an officer or employee of the union, to request, receive, obtain or agree to receive or obtain a cash or in kind payment from the employer.

This does not include legitimate payments.

### What penalties apply?

An individual who is found to be in breach of either ss. 536F or 536G may be imprisoned for up to two years and/or be fined a maximum of 500 penalty units. A body corporate may be fined a maximum of 2500 penalty units.

### What is a 'cash or in kind payment'? (s. 536F(4))

Section 536F(4) defines a cash or in kind payment as a benefit that is in cash, any other money form, or goods or services.

### What is a 'legitimate payment'? (s. 536F(3))

A legitimate payment includes any of the following, provided that the payment does not fall within the meaning of a corrupting benefit in s.536D (see above for explanation of corrupting benefit):



- membership fees of an organisation deducted from the wages of employees who have agreed in writing to become a member
- benefits provided and used for the sole or dominant purpose of benefitting the employer's employees, or former employees in relation to their former employment
- gifts or contributions deductible under the *Income Tax Assessment Act 1997* and used in accordance with the law
- benefits of nominal value (no more than two penalty units) for travel or hospitality during consultation, negotiation or bargaining
- token gifts, event invitations or similar benefits of nominal value (less than two penalty units) given in accordance with common courteous practice among employers and organisations
- payments made at market value for goods and services supplied to an employer in the ordinary course of an organisation's business
- payments made under or in accordance with a law of the Commonwealth, a state or a territory
- benefits provided in settlement of a genuine legal dispute or in accordance with an order, judgment or award of a court or the Fair Work Commission.

### **Who is a 'national system employer'? (s. 536F(7))**

Subsection 536F(7) refers to the s.4 definition of national system employer which includes:

- a constitutional corporation
- the Commonwealth
- a Commonwealth authority
- a person so far as the person, in connection with constitutional trade or commerce, employs, or usually employs, as an individual:
  - a flight crew officer
  - a maritime employee, or
  - a waterside worker
- a body corporate incorporated in a territory
- a person who carries on an activity (whether of a commercial, governmental or other nature) in a territory in Australia.

### **Who is a 'prohibited beneficiary' of a union? (s. 536F(5))**

A prohibited beneficiary includes:



- an entity controlled by the union
- the union's officers or employees
- an officer or employee's spouse or controlled entity
- a person or entity to whom the union or other prohibited beneficiary directs the employer to provide a cash or in kind payment to.

### **Further information**

If you have any further questions relating to the loan, grant and donation disclosure requirements in the statement or the financial report, please email the ROC at [regorgs@roc.gov.au](mailto:regorgs@roc.gov.au)

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