



# Corrupting Benefits

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The Fair Work Amendment (Corrupting Benefits) Act 2017 (**the Amendment Act**) came into force on 11 September 2017 and makes changes to the Fair Work Act 2009 (**the Act**). These changes are in response to recommendations of the Royal Commission into Trade Union Governance and Corruption. They relate to corrupting benefits and add new disclosure rules which apply during enterprise bargaining.

The changes:

- Make it an offence to give, receive or solicit a corrupting benefit
- Make it an offence for employers to give, and unions to receive or solicit illegitimate cash or in kind payments
- Require employers and registered organisations that are bargaining representatives for a proposed enterprise agreement to disclose certain financial benefits that they, or a person or body reasonably connected with them, may derive from the proposed agreement. Employees must have access to the disclosure document before they vote on the proposed agreement.

This webpage provides a summary of the changes but is not intended to be a comprehensive statement of the law. For a comprehensive understanding of the changes please refer to the relevant sections of the Act.

## Giving, receiving or soliciting a corrupting benefit

## **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 gives, receives or solicits a corrupting benefit may be imprisoned for a period of up to 10 years and/or may be fined a maximum of 5000 penalty units (presently \$1.05 million). A body corporate may be fined a maximum of 25 000 penalty units (presently \$5.25 million).

## **What is a ‘benefit’?**

Benefit is given a wide meaning in the Act and includes any advantage and is not limited to property (see s. 536D(7)).

## **What is ‘influence’?**

The intention to influence an officer or employee involves an intention to influence them:

- 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)
- to give 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 officer or employee of an organisation
- 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.

## **Giving, receiving or soliciting cash and in kind payments**

New ss. 536F and 536G create offences relating to cash and in kind payments.

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

This does not include legitimate payments.

### **What penalties apply?**

An individual who offers, gives, receives or solicits a cash and in kind payment may be imprisoned for up to 2 years and/or be fined a maximum of 500 penalty units (presently \$105 000). A body corporate may be fined a maximum of 2500 penalty units (presently \$525 000).

### **What is a cash or in kind payment?**

A cash or in kind payment is a benefit that is in cash, any other money form, or goods or services.

### **What is a legitimate payment?**

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

- membership fees of an organisation deducted from the wages of employees who have agreed to become a member in writing
- 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 to a deductible gift recipient
- benefits of nominal value (presently no more than \$420) for travel or hospitality during consultation, negotiation or bargaining
- token gifts or event invitations of nominal value (presently no more than \$420) 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, 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, tribunal or the Fair Work Commission.

## **Who is a 'prohibited beneficiary' of a union?**

Prohibited beneficiaries include:

- 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.

## **Disclosure Requirements**

New ss. 179 and 179A require employers and registered organisations that are bargaining representatives for a proposed enterprise agreement to disclose certain financial benefits (disclosable benefits) that they or parties closely connected to them may derive under the terms of the proposed agreement. Employees must have access to the disclosure document before they vote on the proposed agreement.

## What penalties apply?

Failure to comply with disclosure requirements may give rise to a fine of up to 60 penalty units for a person (presently \$12 600) and 300 penalty units for a body corporate (presently \$63 000). However a contravention of the disclosure requirements will not preclude the approval of an enterprise agreement by the Fair Work Commission.

## What is a disclosable benefit for an organisation?

A disclosable benefit for an organisation is:


- a financial benefit, that will be (or could reasonably be expected to be)
  - received as a direct or indirect consequence of one or more terms of the proposed agreement,
  - received by the organisation or a related party of the organisation
- but does not include a financial benefit that is:
  - payable to an individual as an employee (covered by the agreement), or
  - payment of a fee for membership of the organisation

## What is a disclosable benefit for an employer?

A disclosable benefit for an employer is:

- a financial benefit, that will be (or could reasonably be expected to be)
  - received as a direct or indirect consequence of one or more terms of the proposed agreement,
  - received by the employer or an associated entity of the employer
- but does not include a financial benefit that is received in the ordinary course of business

## Disclosure document

Organisations and employers with a disclosable benefit must prepare a disclosure document as prescribed by schedule 2.1A of the *Fair Work Regulations 2009*. The disclosure document can be accessed from the [Federal Register of Legislation](#) .

The following details must be included in the disclosure document:

- the beneficial terms of the proposed agreement

- the nature and the amount of each benefit
- the name of each beneficiary,
- the name of the person providing the benefit.

The organisation and employer must not knowingly or recklessly make a false or misleading representation in a disclosure document.

## **Provision of an organisation's disclosure document**

The organisation must provide the disclosure document to each employer covered by the proposed agreement no later than the end of the fourth day of the access period.

The employer must then take all reasonable steps to ensure that (as soon as practicable) the relevant employees are either given a copy of the organisation's disclosure document or have access to a copy throughout the remainder of the access period.

## **Provision of an employer's disclosure document**

The employer must take reasonable steps to ensure that the employees covered by the proposed agreement are either given a copy of the disclosure document, or have access to a copy of the document no later than the end of the fourth day of the access period.

## **What is the 'access period'?**

The access period is the seven day period immediately before voting for the agreement commences.

## **Find out more**

The Registered Organisations Commission (the ROC) is leading the campaign to increase awareness about the changes and ensure that employers and organisations understand their new obligations under the Act. View our resources below:

- [Corrupting benefits tools and resources](#)