



Corrupting benefits laws – what do employers need to know?

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The *Fair Work Act 2009* (Cth) has been amended to prohibit “sweetheart deals” between employers and unions by criminalising “corrupting benefits” passing between them.

The changes are a response to the findings of the Royal Commission into Trade Union Governance and Corruption, which identified deals between employers and unions that were detrimental to employees, including under certain enterprise agreements.

What are the new laws?

The new laws:

- Prohibit the giving, receiving, or soliciting “corrupting benefits”.
- Prohibit the payment of cash or “in kind” payments to registered organisations (unions or employer associations).
- Require employers and bargaining representatives to disclose financial links and benefits they may receive under a proposed enterprise agreement.

Prohibiting giving, receiving or soliciting “corrupting benefits”

A “corrupting benefit” is a benefit that is intended to influence an employee or officer of a registered organisation:

- in the performance of their duties;
- in the exercise of their legal powers or functions; or
- to provide an advantage to the person providing the benefit.

A benefit is broadly defined and includes money and property.

Individuals who give, receive or solicit a corrupting benefit will face criminal penalties of up to 10 years’ imprisonment and/or fines of up to \$1.05 million. Companies face fines of up to \$5.25 million.

Prohibiting cash and in-kind payments

People that can help



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Prohibiting cash and in-kind payments

New criminal penalties apply to unlawful cash or “in kind” payments which are broadly defined and include the provision of goods and services.

These penalties apply to:

- employers who provide, offer or promise, a cash or in-kind payment to employee organisations or certain related parties; and
- registered organisations that request, receive or agree to receive a cash or in kind payment from an employer.

Some exceptions for employers exist for certain types of payments, such as where an employer is authorised by an employee to deduct union membership fees from their wages.

These offences carry a maximum penalty of two years imprisonment and/or fines of up to \$105,000 for individuals and fines of up to \$525,000 for companies.

Disclosure requirements

Under the new laws, employers and organisations that are bargaining representatives during the negotiation of a proposed enterprise agreement must disclose certain financial benefits that they (or related parties) may receive because of a term of the enterprise agreement.

Employers making a disclosure must give the prescribed notice to all employees who will be covered by a proposed enterprise agreement. Registered organisations must also make disclosures to the employer(s) and relevant employees.

The prescribed disclosure statements must be provided during the access period that occurs before any vote on enterprise agreement can take place.

Registered organisations must not knowingly or recklessly make a false or misleading representation in the disclosure document.

Failure to comply with these new disclosure requirements carries a civil penalty of up to \$12,600 for an individual and \$63,000 for a company.

What these changes mean for employers

The full scope of these new laws has not yet been tested by the courts. While the Fair Work Ombudsman does not have the power to investigate breaches of the new criminal offences, it has indicated that it will refer suspected offences to the Australian Federal Police.

Employers operating in unionised industries should exercise care and due diligence in their dealings with unions and other employee organisations. Employers will need to consider whether any existing or proposed arrangements are affected by the new laws, and seek legal advice where necessary.

Employers involved in enterprise bargaining will need to become familiar with the new disclosure requirements to ensure that any financial benefits contemplated by an enterprise agreement are identified and disclosed. As the prescribed disclosure statements must be provided to employees during the access period, employers will need to be fully across these new laws well in advance of putting an agreement to a vote.

Please contact the [Workplace Relations, Employment and Safety Team](#) if you would like advice on how these laws will affect your organisation.

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