

Change is as good as a holiday? New Fair Work laws & award changes - What you need to know!

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Changes for Franchise Groups

The [Fair Work Amendment \(Vulnerable Workers\) Bill 2017](#) took effect on 15 September 2017. These amendments come following a Senate Committee Inquiry into contraventions of workplace laws by franchise groups and is based on the recommendations resulting from the inquiry.

The bill amends the *Fair Work Act 2009* to increase maximum civil penalties for certain 'serious contraventions' to ten times that of currently levels, up from \$63,000 per breach to \$630,000 per breach for body corporates and up from \$12,600 per breach to \$126,000 per breach for individuals (i.e. company directs/ owners etc.)

The changes effectively hold 'responsible franchisors'/ 'holding companies' responsible for certain contraventions (primarily breaches of the minimum rates of pay, the national employment standards, awards, sham contracting, record keeping and pay slip provisions etc.) by their franchisees/ subsidiaries. This is only the case where there was a failure to take reasonable steps to prevent the contraventions from occurring **and** it ought reasonably have been known that the contraventions would occur/ were likely to occur. For a responsible franchisor to be held liable, they need to have a significant degree of control over their business network.

It is not necessary that the holding company knew the contraventions were occurring, it need only be established that they could reasonably have expected to have known that the contravention would, or would be likely to, occur. The test is an objective one that takes into account the franchisor's experience, knowledge and acumen. The test for whether reasonable steps were taken considers the resources available to the franchisor, it's influencing power, action plans and action actually taken in the knowledge of a contravention.

The amendments also clarify prohibition on employers unreasonably requiring employees to make payments in relation to the performance of their work and also provides the Fair Work Ombudsman with greater evidence gathering powers.

Changes to Agreement Making

The [Fair Work Amendment \(Corrupting Benefits\) Bill 2017](#) took effect on 16 August 2017, now making it a criminal offence to give, receive or solicit a 'corrupting benefit' (a financial benefit or goods or services designed to influence decisions and actions by unions or their representatives in enterprise agreement bargaining). Additionally, the amendments also introduce requirements for bargaining representatives in agreement negotiations to disclose any financial benefit they stand to gain from the proposed agreement.

Specifically, the changes make it a criminal offence:

- to give a registered organisation, or persons associated with a registered organisation, a corrupting benefit;
- to receive or solicit a corrupting benefit;

- for certain national system employers to provide, offer or promise to provide cash or in-kind payments, other than certain legitimate payments, to employee organisations or prohibited beneficiaries;
- to solicit, receive, obtain or agree to obtain any such prohibited payment.

Significant increases in penalties including 10 years' imprisonment and fines of 5,000 penalty points (\$105,000) for individuals or 25,000 penalty points (\$5.25 million) for body corporates are also now enforceable for breaches of this part. The amendments are in response to the recommendations of the Royal Commission into Trade Union Governance and Corruption (TURC).

Changes to Award Penalty Rates

Unions United Voice and Shop Distributive and Allied Employees Association presented their Federal Court challenge last week, appealing the February decision of the Fair Work Commission that reduced weekend and public holiday penalty rates for employees in the hospitality, retail, fast food and pharmacy sectors. On Wednesday, 11 October 2017, the Federal Court rejected the challenge and dismissed the appeal.

Labour's [*Fair Work Amendment \(Protecting Take-home Pay\) Bill*](#) was introduced into parliament earlier this year as an alternative attempt to the Federal Court challenge to preserve award penalty rates. The bill nullifies any decisions by the FWC that reduces award penalty rates and decrease an employee's take-home pay. If passed, the amendments will apply retrospectively to decisions issued from 22 February 2017 onwards.

In light of the failed challenge to the penalty rates decision, it is now likely that the focus will be on the rapid passage of this bill through parliament. There are currently applications before the FWC to reduce weekend and public holiday penalty rates in the restaurant and hairdressing sectors as well as a new application to reduce Sunday penalty rates for shift workers in the retail sector. All applications are scheduled for hearings later this year and early next year.

Review of the State IR System

The WA Industrial Relations Minister, Bill Johnston, has commissioned barrister and former acting WAIRC president (2005 – 2009) Mark Ritter SC to review the State's IR system. The review, which is being driven by the Labour Government, will see former AWU WA branch secretary Stephen Price assist Ritter in the task. This will be the first review since the Steven Amendola (a consultant on the Howard Government's Work Choices) review was undertaken in 2002.

In undertaking the review Ritter and Price will consider:

- the definition of "employee" in state employment law to ensure comprehensive coverage;
- whether local government should be regulated by the state IR system;
- a process for updating of state awards for the private sector;
- the current relevance of minimum conditions; and
- the effectiveness of statutory compliance and enforcement mechanisms.

Johnston indicated the WA Labour Government was conscious that the state industrial relations system needed updating to "address the changed employment environment and to meet the needs of its constituents - predominately small business employers and the public sector." It is currently estimated that around 11% of private sector businesses in WA are covered by the state IR system.

"We are committed to ensuring the state industrial relations system is modernised and the review will provide a blueprint on how best to do this," he said. A report on the review is expected early in 2018.

For more information on any of the above, or for information on any human resources or employee relations matters, contact CCI's Employee Relations Advice Centre on (08) 9365 7660 or advice@cciwa.com Our team offers CCI members with unlimited, FREE advice and support as part of most membership packages.