

THE CORRUPTING BENEFITS LEGISLATION: WHAT EVERY EMPLOYER NEEDS TO KNOW

Recent amendments to the *Fair Work Act 2009* (Cth) ("*Fair Work Act*") which criminalise the giving, receiving or soliciting of '*corrupting benefits*' have now been passed by the Commonwealth Parliament. Given the severity of the penalties which now apply to such conduct, all employers should now carefully consider how these latest updates to the *Fair Work Act* affect their dealings with unions.

BACKGROUND

The recent Royal Commission into Trade Union Governance and Corruption uncovered an array of inappropriate conduct. The Commission's final report identified a range of unacceptable practices, including the negotiation of so-called 'sweetheart' Enterprise Agreements between some unions and employers. These Agreements often disadvantaged workers while simultaneously providing (often significant) financial benefits to the relevant union and its officials.

The *Fair Work Amendment (Corrupting Benefits) Act 2017* (Cth) ("*Corrupting Benefits Act*") is aimed squarely at ending such practices. An individual found guilty of dishonestly giving, receiving or soliciting '*corrupting benefits*' now faces a maximum penalty of 10 years in prison and/or a fine in excess of \$1,000,000. A body corporate now faces penalties exceeding \$5,000,000.

DEFINING 'CORRUPTING BENEFITS'

The *Corrupting Benefits Act* makes it unlawful for a person to dishonestly give, receive or solicit a '*benefit*' which is intended to influence an officer or an employee of a '*registered organisation*' (such as a trade union) to perform his or her duties or functions improperly.

The Act's *Explanatory Memorandum* helpfully provides two clear examples of the types of behaviour which the Act seeks to stamp-out:

- An employer offers a union official a benefit in exchange for that official encouraging his/her members to accept an Enterprise Agreement which contains terms and conditions less favourable than those the union would otherwise have negotiated; and
- A union official solicits a building company to renovate his/her own partner's home



(presumably without charge) in exchange for that official not entering worksites where that company is performing work.

As the second example makes clear, a '*corrupting benefit*' need not be in the form of cash or a direct equivalent. Instead, the term encompasses a wide range of conduct which provides the recipient with an advantage of some kind which he or she otherwise has no right to receive.

DUTY TO DISCLOSE FINANCIAL BENEFITS

In addition to criminalising corrupting benefits, the *Corrupting Benefits Act* also imposes a new duty upon employers and unions to disclose any financial benefits which will flow to them under the terms of a proposed Enterprise Agreement. This information must be provided to all employees eligible to take part in the vote to approve the proposed Enterprise Agreement by the end of the fourth day of the seven day '*access period*' immediately prior to the ballot.

This duty to disclose will ensure employees are fully-informed about the financial benefits which will be enjoyed by their union and/or their employer as a consequence of their vote.

ACTION REQUIRED

The *Corrupting Benefits Act* will have far-reaching ramifications for employers and unions. While we very much doubt that any of our clients would offer any corrupting benefits, all employers need to be aware of the new laws and must comply.

For further information or assistance, please contact David Bates, Team Leader & Strategic Consultant, Harmers Workplace Lawyers on +612 9267 4322.

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