



Disclosure requirements for bargaining representatives

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 disclosure rules which apply during enterprise bargaining. If you require information about new offences in relation to corrupting benefits in the Act, see our fact sheet *Corrupting benefits offences* (FS 012), available on our [website](#).

New disclosure requirements

Under the new ss. 179 and 179A of the Act, bargaining representatives for enterprise agreements (other than greenfields agreements) are required to disclose financial benefits (**disclosable benefits**) they receive or expect to receive from the terms of a proposed enterprise agreement.

Bargaining representatives include:

- registered organisations (s. 179)
- employers (s. 179A).

What penalties apply?

Failure to comply with disclosure requirements may give rise to a fine of up to 60 penalty units for an individual and 300 penalty units for a body corporate. However, a contravention of the disclosure requirements will not preclude the approval of an enterprise agreement by the Fair Work Commission.¹

What is a disclosable benefit for a registered organisation?

Section 179(6) of the Act provides that a disclosable benefit for a registered organisation is:

- a financial benefit
- received as a direct or indirect consequence of one or more terms of the 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 membership fee for membership of the organisation.

¹ s. 188A.

What is a disclosable benefit for an employer?

Section 179A(4) of the Act provides that a disclosable benefit for an employer covered by the proposed agreement is:

- a financial benefit
- received as a direct or indirect consequence of one or more terms of the 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 the employer's business.

Disclosure documents

Registered organisations and employers covered by a proposed agreement with a disclosable benefit must prepare a disclosure document.² The disclosure document must:

- itemise the beneficial terms of the proposed agreement
- describe the nature and, as far as reasonably practicable, the amount of the benefit or the basis on which the benefit is or will be determined
- state the name of each beneficiary
- state the name of the person who will or can reasonably be expected to provide the benefit.³

The organisation and employer must not knowingly or recklessly make a false or misleading representation in a disclosure document.⁴

New disclosure document template

As a result of the *Fair Work Amendment (Corrupting Benefits) Regulations 2017*, from 29 January 2018 disclosure documents prepared by an organisation or an employer must be in the form prescribed by schedule 2.1A of the *Fair Work Regulations 2009*.⁵

A copy of the disclosure document form can be accessed from [the Federal Register of Legislation](#).

When and to whom must an organisation's disclosure document be provided?

A registered organisation must take all reasonable steps to ensure that a disclosure document is delivered to each employer covered by the agreement no later than the end of the fourth day of the access period.⁶

Each employer must 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.⁷

² ss. 179(1) & 179A(1).

³ ss. 179(4) & 179A(3), r. 2.06AA(1)(a) & (2)(a).

⁴ ss. 179(5) & 180(4C).

⁵ r. 2.06AA(1)(b) & (2)(b)

⁶ s. 179(3).

⁷ s. 180(4A).

When and to whom must an employer's disclosure document be provided?

An employer that is a bargaining representative for a proposed enterprise agreement must take all reasonable steps to ensure that each employee covered by the agreement is either given a copy of its disclosure document, or has access to a copy of the document no later than the end of the fourth day of the access period.⁸

What is the 'access period'?

The access period is the seven day period immediately before voting for the agreement commences.⁹

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This fact sheet is not intended to be comprehensive. The Registered Organisation Commission does not provide legal advice. Users must rely upon the relevant legislation, which is set out in the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the *Fair Work (Registered Organisations) Regulations 2009*.

⁸ s. 180(4B).

⁹ s. 180(4).