2016-2017

The Parliament of the
Commonwealth of Australia

THE SENATE

Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

(Government)

(1) Schedule 1, page 5 (after line 6), after item 12, insert:

12A At the end of subsection 550(1)

Add:

Note: If a person (the involved person) is taken under this subsection to have contravened a civil remedy provision, the involved person’s contravention may be a serious contravention (see subsection 557A(5A)). Serious contraventions attract higher maximum penalties (see subsection 539(2)).

[increasing maximum penalties]

(2) Schedule 1, item 13, page 6 (lines 2 to 9), omit subsection 557A(1), substitute:

(1) A contravention of a civil remedy provision by a person is a serious contravention if:

(a) the person knowingly contravened the provision; and

(b) the person’s conduct constituting the contravention was part of a systematic pattern of conduct relating to one or more other persons.

Note: For the liability of bodies corporate for serious contraventions, see section 557B.

Example: Generally, subsection 323(1) requires an employer to pay an employee the full amount payable to the employee in relation to the performance of work.

A contravention of subsection 323(1) is a serious contravention if the employer knowingly does not pay the employee in full (even if the employer does not know the exact amount of the underpayment) and that contravention is part of a systematic pattern of conduct by the employer. The systematic pattern of conduct of the employer may relate to more than one employee and may consist of different contraventions.

Systematic pattern of conduct

[increasing maximum penalties]

(3) Schedule 1, item 13, page 6 (after line 18), after paragraph 557A(2)(c), insert:

(ce) the person’s response, or failure to respond, to any complaints made about the relevant contraventions; and

[increasing maximum penalties]

(4) Schedule 1, item 13, page 6 (after line 36), after subsection 557A(5), insert:
Involvement in a serious contravention

(5A) A person (the involved person) who is involved in a contravention of a civil remedy provision by another person (the principal) commits a serious contravention of the provision only if:

(a) the principal’s contravention was a serious contravention; and
(b) the involved person knew that the principal’s contravention was a serious contravention.

Application for a serious contravention order and alternative orders

(increasing maximum penalties)

(5) Schedule 1, item 13, page 7 (lines 14 to 17), omit subsection 557B(1), substitute:

(1) For the purposes of subsection 557A(1), a body corporate knowingly contravenes a civil remedy provision if the body corporate expressly, tacitly or impliedly authorised the contravention.

(increasing maximum penalties)