2016-2017

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

No. , 2017

(Employment)

A Bill for an Act to amend the Fair Work Act 2009, and for related purposes
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No.  , 2017  
*Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017*  
i
A Bill for an Act to amend the Fair Work Act 2009, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
## Commencement information

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. The whole of this Act</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

1. Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

2. Any information in column 3 of the table is not part of this Act.

3. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Part 1—Increasing maximum penalties for contraventions of certain civil remedy provisions

Fair Work Act 2009

1 Section 12
Insert:

serious contravention has the meaning given by section 557A.

2 Subsection 539(2) (after note 3)
Insert:

Note 4: See section 557A in relation to a serious contravention of a civil remedy provision.

3 Subsection 539(2) (cell at table item 1, column 4)
Repeal the cell, substitute:
for a serious contravention—600 penalty units; or
otherwise—60 penalty units

4 Subsection 539(2) (cell at table item 2, column 4)
Repeal the cell, substitute:
for a serious contravention—600 penalty units; or
otherwise—60 penalty units

5 Subsection 539(2) (cell at table item 3, column 4)
Repeal the cell, substitute:
Schedule 1 Amendments

Part 1 Increasing maximum penalties for contraventions of certain civil remedy provisions

for a serious contravention—600 penalty units; or otherwise—60 penalty units

6 Subsection 539(2) (cell at table item 4, column 4)

Repeal the cell, substitute:
for a serious contravention—600 penalty units; or otherwise—60 penalty units

7 Subsection 539(2) (cell at table item 5, column 4)

Repeal the cell, substitute:
for a serious contravention—600 penalty units; or otherwise—60 penalty units

8 Subsection 539(2) (cell at table item 7, column 4)

Repeal the cell, substitute:
for a serious contravention—600 penalty units; or otherwise—60 penalty units

9 Subsection 539(2) (cell at table item 8, column 4)

Repeal the cell, substitute:
Increasing maximum penalties for contraventions of certain civil remedy provisions

Part 1

for a serious contravention — 600 penalty units; or
otherwise — 60 penalty units

10 Subsection 539(2) (cell at table item 9, column 4)
Repeal the cell, substitute:
for a serious contravention — 600 penalty units; or
otherwise — 60 penalty units

11 Subsection 539(2) (cell at table item 10, column 4)
Repeal the cell, substitute:
for a serious contravention — 600 penalty units; or
otherwise — 60 penalty units

12 Subsection 539(2) (cell at table item 29, column 4)
Repeal the cell, substitute:
for a serious contravention — 600 penalty units; or
otherwise — 60 penalty units

13 After section 557
Insert:
557A Serious contravention of civil remedy provisions

(1) A contravention of a civil remedy provision by a person is a **serious contravention** if the person’s conduct constituting the contravention was:
   (a) deliberate; and
   (b) 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.

(2) In determining whether the person’s conduct constituting the contravention of the provision was part of a systematic pattern of conduct, a court may have regard to:
   (a) the number of contraventions (the **relevant contraventions**) of this Act committed by the person; and
   (b) the period over which the relevant contraventions occurred; and
   (c) the number of other persons affected by the relevant contraventions; and
   (d) except if the provision contravened is section 535—whether the person also contravened subsection 535(1), (2) or (4) by failing to make or keep, in accordance with that section, an employee record relating to the conduct constituting the relevant contraventions; and
   (e) except if the provision contravened is section 536—whether the person also contravened subsection 536(1), (2) or (3) by failing to give, in accordance with that section, a pay slip relating to the conduct constituting the relevant contraventions.

(3) Subsection (2) does not limit the matters that a court may have regard to.

(4) Subsection 557(1) does not apply for the purposes of determining whether the person’s conduct was part of a systematic pattern of conduct.

(5) Subsection (4) does not otherwise affect the operation of subsection 557(1) in relation to serious contraventions of civil remedy provisions.
Amendments Schedule 1
Increasing maximum penalties for contraventions of certain civil remedy provisions
Part 1

(6) If a person is applying for an order in relation to a serious contravention of a civil remedy provision, the person’s application under subsection 539(2) must specify the relevant serious contravention.

(7) If, in proceedings for an order in relation to a serious contravention of a civil remedy provision, the court:
(a) is not satisfied that the person has committed a serious contravention against that provision; and
(b) is satisfied that the person has contravened that provision;
the court may make a pecuniary penalty order against the person not for the serious contravention but for the contravention of that provision.

557B Liability of bodies corporate for serious contravention

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

(2) This section does not limit section 793.
Part 2—Liability of responsible franchisor entities and holding companies

Fair Work Act 2009

14 Section 12

Insert:

franchisee entity of a franchise: see subsection 558A(1).

responsible franchisor entity for a franchisee entity: see subsection 558A(2).

15 Section 537 (after the paragraph relating to Division 4)

Insert:

Division 4A imposes obligations on responsible franchisor entities in relation to certain contraventions of civil remedy provisions by franchisee entities and on holding companies in relation to certain contraventions of civil remedy provisions by subsidiaries.

16 Subsection 539(2) (after table item 29)

Insert:

<table>
<thead>
<tr>
<th>Part 4-1—Civil remedies</th>
<th>29A 558B(1)</th>
<th>(a) an employee;</th>
<th>(a) the Federal Court;</th>
<th>60 penalty units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>558B(2)</td>
<td>(b) an employee organisation;</td>
<td>(b) the Federal Circuit Court</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) an inspector</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

17 After Division 4 of Part 4-1

Insert:
Division 4A—Responsibility of responsible franchisor entities and holding companies for certain contraventions

558A Meaning of franchisee entity and responsible franchisor entity

(1) A person is a franchisee entity of a franchise if:
   (a) the person is a franchisee (including a subfranchisee) in relation to the franchise; and
   (b) the business conducted by the person under the franchise is substantially or materially associated with intellectual property relating to the franchise.

(2) A person is a responsible franchisor entity for a franchisee entity of a franchise if:
   (a) the person is a franchisor (including a subfranchisor) in relation to the franchise; and
   (b) the person has a significant degree of influence or control over the franchisee entity’s affairs.

558B Responsibility of responsible franchisor entities and holding companies for certain contraventions

Responsible franchisor entities

(1) A person contravenes this subsection if:
   (a) an employer who is a franchisee entity of a franchise contravenes a civil remedy provision referred to in subsection (7); and
   (b) the person is a responsible franchisor entity for the franchisee entity; and
   (c) the contravention by the franchisee entity occurs in the franchisee entity’s capacity as a franchisee entity; and
   (d) either:
      (i) the responsible franchisor entity or an officer (within the meaning of the Corporations Act 2001) of the responsible franchisor entity knew or could reasonably be expected to have known that the contravention by the franchisee entity would occur; or
Schedule 1 Amendments
Part 2 Liability of responsible franchisor entities and holding companies

(ii) at the time of the contravention by the franchisee entity,
the responsible franchisor entity or an officer (within the meaning of the Corporations Act 2001) of the responsible franchisor entity knew or could reasonably be expected to have known that a contravention by the franchisee entity of the same or a similar character was likely to occur.

Note: This subsection is a civil remedy provision (see this Part).

Holding companies

(2) A person contravenes this subsection if:
(a) the person is a body corporate; and
(b) a subsidiary (within the meaning of the Corporations Act 2001) of the body corporate who is an employer contravenes a civil remedy provision referred to in subsection (7); and
(c) either:
   (i) the body corporate or an officer (within the meaning of the Corporations Act 2001) of the body corporate knew or could reasonably be expected to have known that the contravention by the subsidiary would occur; or
   (ii) at the time of the contravention by the subsidiary, the body corporate or an officer (within the meaning of the Corporations Act 2001) of the body corporate knew or could reasonably be expected to have known that a contravention by the subsidiary of the same or a similar character was likely to occur.

Note: This subsection is a civil remedy provision (see this Part).

Reasonable steps to prevent a contravention of the same or a similar character

(3) A person does not contravene subsection (1) or (2) if, as at the time of the contravention referred to in paragraph (1)(a) or (2)(b), the person had taken reasonable steps to prevent a contravention by the franchisee entity or subsidiary of the same or a similar character.

(4) For the purposes of subsection (3), in determining whether a person took reasonable steps to prevent a contravention by a franchisee entity or subsidiary (the contravening employer) of the
same or a similar character, a court may have regard to all relevant matters, including the following:

- (a) the size and resources of the franchise or body corporate (as the case may be);
- (b) the extent to which the person had the ability to influence or control the contravening employer’s conduct in relation to the contravention referred to in paragraph (1)(a) or (2)(b) or a contravention of the same or a similar character;
- (c) any action the person took directed towards ensuring that the contravening employer had a reasonable knowledge and understanding of the requirements under the applicable provisions referred to in subsection (7);
- (d) the person’s arrangements (if any) for assessing the contravening employer’s compliance with the applicable provisions referred to in subsection (7);
- (e) the person’s arrangements (if any) for receiving and addressing possible complaints about alleged underpayments or other alleged contraventions of this Act within:
  - (i) the franchise; or
  - (ii) the body corporate or any subsidiary (within the meaning of the Corporations Act 2001) of the body corporate;
- (f) the extent to which the person’s arrangements (whether legal or otherwise) with the contravening employer encourage or require the contravening employer to comply with this Act or any other workplace law.

(5) Subsection (4) does not limit subsection (3).

Civil proceedings in relation to contravention by franchisee entity or subsidiary not required

(6) To avoid doubt, a reference in paragraph (1)(a) or (2)(b) to a contravention by a franchisee entity or subsidiary includes any contravention whether or not an order has been sought or made against the franchisee entity or subsidiary under Division 2 for the contravention.
Schedule 1 Amendments
Part 2 Liability of responsible franchisor entities and holding companies

Relevant civil remedy provisions

(7) The civil remedy provisions are the following:
   (a) subsection 44(1) (which deals with contraventions of the National Employment Standards);
   (b) section 45 (which deals with contraventions of modern awards);
   (c) section 50 (which deals with contraventions of enterprise agreements);
   (d) section 280 (which deals with contraventions of workplace determinations);
   (e) section 293 (which deals with contraventions of national minimum wage orders);
   (f) section 305 (which deals with contraventions of equal remuneration orders);
   (g) subsection 323(1) (which deals with methods and frequency of payment);
   (h) subsection 323(3) (which deals with methods of payment specified in modern awards or enterprise agreements);
   (i) subsection 325(1) (which deals with unreasonable requirements to spend or pay amounts);
   (j) subsection 328(1), (2) or (3) (which deal with employer obligations in relation to guarantees of annual earnings);
   (k) subsection 357(1) (which deals with misrepresenting employment as an independent contracting arrangement);
   (l) section 358 (which deals with dismissing an employee to engage as an independent contractor);
   (m) section 359 (which deals with misrepresentations to engage an individual as an independent contractor);
   (n) subsection 535(1), (2) or (4) (which deal with employer obligations in relation to employee records);
   (o) subsection 536(1), (2) or (3) (which deal with employer obligations in relation to pay slips).

558C Right of responsible franchisor entity or holding company to recover

   (1) This section applies if:
Liability of responsible franchisor entities and holding companies

(a) a person pays an amount to, or on behalf of, an employee pursuant to an order under subsection 545(1) relating to a contravention by the person of subsection 558B(1) or (2) in relation to a franchisee entity or subsidiary (the *contravening employer*); and

(b) the person has not otherwise recovered from the contravening employer an amount (the *recoverable amount*) equal to the amount paid by the person.

(2) The person may commence proceedings against the contravening employer for payment to the person of so much of the recoverable amount as has not been recovered.

(3) The proceedings may be commenced in:

(a) the Federal Court; or

(b) the Federal Circuit Court; or

(c) an eligible State or Territory court.

(4) The court may make an order requiring the contravening employer to pay the person the recoverable amount (or so much of it as has not been recovered from the contravening employer), if the court is satisfied that this section applies as referred to in subsection (1).

(5) In making the order, the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.

(6) Without limiting subsection (5), in determining the amount of interest, the court must take into account the period between the day when the amount referred to in paragraph (1)(a) was paid by the person and the day when the order is made.

(7) Proceedings cannot be commenced under this section more than 6 years after the time when the person paid the amount referred to in paragraph (1)(a).
Part 3—Unreasonable requirements

Fair Work Act 2009

18 Section 151
Repeal the section, substitute:

151 Terms about payments and deductions for benefit of employer etc.
A modern award must not include a term that has no effect because of:
(a) subsection 326(1) (which deals with unreasonable deductions for the benefit of an employer); or
(b) subsection 326(3) (which deals with unreasonable requirements to spend or pay an amount); or
(c) subsection 326(4) (which deals with deductions or payments in relation to employees under 18).

19 Subsection 253(1) (note 2)
Repeal the note, substitute:

Note 2: Certain terms of enterprise agreements relating to deductions, or requiring employees to spend or pay amounts, have no effect (see section 326).

20 Division 2 of Part 2-9 (heading)
Repeal the heading, substitute:

Division 2—Payment of wages etc.

21 Section 325 (heading)
Repeal the heading, substitute:

325 Unreasonable requirements to spend or pay amount

22 Subsection 325(1)
Repeal the subsection, substitute:
(1) An employer must not directly or indirectly require an employee to spend, or pay to the employer or another person, an amount of the employee’s money or the whole or any part of an amount payable to the employee in relation to the performance of work, if:
   (a) the requirement is unreasonable in the circumstances; and
   (b) for a payment—the payment is directly or indirectly for the benefit of the employer or a party related to the employer.

Note: This subsection is a civil remedy provision (see Part 4-1).

23 Section 326
Repeal the section, substitute:

326 Certain terms have no effect

Unreasonable deductions for benefit of employer

(1) A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work, if the deduction is:
   (a) directly or indirectly for the benefit of the employer or a party related to the employer; and
   (b) unreasonable in the circumstances.

(2) The regulations may prescribe circumstances in which a deduction referred to in subsection (1) is or is not reasonable.

Unreasonable requirements to spend or pay an amount

(3) A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term:
   (a) permits, or has the effect of permitting, an employer to make a requirement that would contravene subsection 325(1); or
   (b) directly or indirectly requires an employee to spend or pay an amount, if the requirement would contravene subsection 325(1) if it had been made by an employer.
Schedule 1 Amendments

Part 3 Unreasonable requirements

Deductions or payments in relation to employees under 18

(4) A term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term:

(a) permits, or has the effect of permitting, an employer to deduct an amount from an amount that is payable to an employee in relation to the performance of work; or

(b) requires, or has the effect of requiring, an employee to make a payment to an employer or another person;

if the employee is under 18 and the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

24 Section 327 (heading)

Repeal the heading, substitute:

327 Things given or provided, and amounts required to be spent or paid, in contravention of this Division

25 Paragraph 327(b)

Repeal the paragraph, substitute:

(b) any amount that the employee has been required to spend or pay contrary to subsection 325(1), or in accordance with a term to which subsection 326(3) applies, is taken to be a deduction, from an amount payable to the employee, made by the employer otherwise than in accordance with section 324.

26 Paragraph 557(2)(i)

Repeal the paragraph, substitute:

(i) subsection 325(1) (which deals with unreasonable requirements to spend or pay amounts);
Part 4—Powers of the Fair Work Ombudsman

Fair Work Act 2009

27 Section 12

Insert:

FWO notice: see subsection 712A(1).

28 Subsection 539(2) (after table item 32)

Insert:

32A 712B(1) an inspector (a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court

600 penalty units

29 Subsection 683(1)

Omit “(other than his or her functions or powers as an inspector)”, substitute “(subject to subsections (1A) and (1B))”.

30 After subsection 683(1)

Insert:

(1A) The Fair Work Ombudsman must not delegate his or her functions or powers as an inspector.

(1B) The Fair Work Ombudsman may delegate to a member of the staff of the Office of the Fair Work Ombudsman who is an SES employee or an acting SES employee:

(a) the power under subsection 712A(1) to give an FWO notice; and

(b) the power under subsection 712A(3) to vary an FWO notice by specifying a later time.

Note: SES employee and acting SES employee are defined in the Acts Interpretation Act 1901.
Schedule 1 Amendments
Part 4 Powers of the Fair Work Ombudsman

31 At the end of subsection 685(1)
Add:
Note: A report must not include information relating to an individual’s affairs (see section 714A).

32 At the end of section 686
Add:
Note: An annual report must not include information relating to an individual’s affairs (see section 714A).

33 Subdivision D of Division 3 of Part 5-2 (heading)
Repeal the heading, substitute:
Subdivision D—Functions and powers of Fair Work Inspectors—general

34 Section 703
Before “The functions”, insert “(1)”.

35 At the end of section 703
Add:
(2) To avoid doubt, the power to issue an FWO notice under section 712A is not a compliance power.

36 Before section 708
Insert:
Subdivision DA—Power to enter premises

37 Before section 711
Insert:
Subdivision DB—Powers to ask questions and require records and documents

38 After section 712
Insert:
712A Fair Work Ombudsman may give FWO notice

Fair Work Ombudsman may require information, documents etc.

(1) The Fair Work Ombudsman may give a written notice (the FWO notice), in the form prescribed by the regulations (if any), to a person if the Fair Work Ombudsman reasonably believes that the person:

(a) has information or documents relevant to an investigation by an inspector into a suspected contravention of this Act; or

(b) is capable of giving evidence that is relevant to such an investigation.

(2) The notice may require the person:

(a) to give the information to the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman, by the time, and in the manner and form, specified in the notice; or

(b) to produce the documents to the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman, by the time, and in the manner, specified in the notice; or

(c) to attend before the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman who is an SES employee or an acting SES employee, at the time and place specified in the notice, and answer questions relevant to the investigation.

The time specified under paragraph (a), (b) or (c) must be at least 14 days after the notice is given.

Note 1: See also sections 712B (which deals with the requirement to comply with an FWO notice), 712D (which deals with protection from liability), 713 (which deals with self-incrimination etc.), 713AA (which deals with legal professional privilege) and 714 (which deals with the power to keep records or documents).

Note 2: SES employee and acting SES employee are defined in the Acts Interpretation Act 1901.

(3) The Fair Work Ombudsman may, in writing, vary an FWO notice given to a person by specifying a later time which is at least 14 days after the notice is first given to the person. This subsection does not limit the application of subsection 33(3) of the Acts Interpretation Act 1901.
Legal representation

(4) A person attending before the Fair Work Ombudsman, or a member of the staff mentioned in paragraph (2)(c), may be represented by a lawyer if the person chooses.

Oath or affirmation

(5) The Fair Work Ombudsman, or a member of the staff mentioned in paragraph (2)(c), may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Fair Work Ombudsman, or any member of the staff of the Office of the Fair Work Ombudsman, may administer the oath or affirmation.

(6) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

712B Requirement to comply with FWO notice

(1) A person who has been given an FWO notice must do the following (as applicable):

   (a) give information or produce a document in accordance with the notice;

   (b) attend to answer questions in accordance with the notice;

   (c) take an oath or make an affirmation when required to do so under subsection 712A(5);

   (d) answer questions relevant to the investigation while attending as required by the FWO notice.

Note: This subsection is a civil remedy provision (see Part 4-1).

(2) Subsection (1) does not apply to the extent that the person is not capable of complying with the requirement.

712C Payment for expenses incurred in attending as required by an FWO notice

(1) A person who attends as required by an FWO notice is (subject to subsection (2)) entitled to be paid fees and allowances, fixed by or calculated in accordance with the regulations, for reasonable expenses (including legal expenses) incurred by the person in so attending.
(2) The person is not entitled to be paid for expenses under this section unless the person:
   (a) applies, in writing, to the Fair Work Ombudsman for payment of the expenses within 3 months after the attendance; and
   (b) provides to the Fair Work Ombudsman sufficient evidence to establish that the person incurred the expenses.

(3) An application under paragraph (2)(a) must:
   (a) if a form is prescribed by the regulations—be in that form; and
   (b) include any information prescribed by the regulations.

712D Protection from liability relating to FWO notices

A person who, in good faith, gives information, produces a record or document, or answers a question, when required to do so under an FWO notice is not liable to:
   (a) any proceedings for contravening any other law because of that conduct; or
   (b) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

Subdivision DC—Other rules relating to answers, records and documents

39 Section 713

Repeal the section, substitute:

713 Self-incrimination etc.

Excuses that are not available

(1) A person is not excused from giving information, producing a record or document, or answering a question, under paragraph 709(d) or subsection 712(1), or under an FWO notice, on the ground that to do so might tend to incriminate the person or otherwise expose the person to a penalty or other liability.
Schedule 1 Amendments
Part 4 Powers of the Fair Work Ombudsman

Use/derivative use indemnity in relation to requirement under paragraph 709(d) or subsection 712(1)

(2) In the case of an individual who produces a record or document, under paragraph 709(d) or subsection 712(1), none of the following:

(a) the record or document produced;
(b) producing the record or document;
(c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document;

is admissible in evidence against the individual in criminal proceedings, other than:
(d) proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Act (false or misleading information or documents); and
(e) proceedings for an offence against section 149.1 of the Criminal Code that relates to this Act (obstruction of Commonwealth officials).

Use indemnity in relation to FWO notices

(3) In the case of an individual who gives information, produces a record or document, or answers a question, under an FWO notice, any information or answer given, or record or document produced, is not admissible in evidence against the individual in proceedings, other than:
(a) proceedings for a contravention of section 712B or 718A (requirement to comply with FWO notice and false or misleading information or documents); and
(b) proceedings for an offence against section 137.1 or 137.2 of the Criminal Code that relates to this Act (false or misleading information or documents); and
(c) proceedings for an offence against section 149.1 of the Criminal Code that relates to this Act (obstruction of Commonwealth officials).

40 After section 713A

Insert:
713AA Legal professional privilege

Nothing in this Part requires a person to produce a document that would disclose information that is the subject of legal professional privilege.

41 Subsection 714(1)

Omit “an inspector”, substitute “the Fair Work Ombudsman, an inspector or any other person”.

42 Subsection 714(1)

Omit “the inspector”, substitute “he or she”.

43 Subsection 714(2)

Omit “an inspector”, substitute “the Fair Work Ombudsman, an inspector or any other person”.

44 Subsection 714(2)

Omit “the inspector”, substitute “he or she”.

45 After section 714

Insert:

714A Reports not to include information relating to an individual’s affairs

(1) Information relating to the affairs of an individual must not be included in a report under section 685 (which allows the Minister to require reports) or in a report referred to in section 686 (which deals with annual reports) if:

(a) the individual is named, or otherwise specifically identified, in the report as the individual to whom the information relates; or

(b) it is reasonably likely that people generally (other than people to whom the individual has disclosed information relating to the individual’s affairs) would be able to work out the identity of the individual to whom the information relates.

(2) For the purposes of applying paragraph (1)(b) to information relating to a particular individual’s affairs, the context in which the
Schedule 1 Amendments
Part 4 Powers of the Fair Work Ombudsman

information appears, and information that is otherwise publicly available, must be taken into account (as well as any other relevant matter).

46 Before section 715

Insert:

Subdivision DD—Enforceable undertakings and compliance notices
Part 5—Hindering and obstructing the Fair Work Ombudsman and inspectors

Fair Work Act 2009

47 Subsection 539(2) (before table item 31, after the subheading “Part 5-2—Office of the Fair Work Ombudsman”)

Insert:

30A 707A(1) an inspector (a) the Federal Court; (b) the Federal Circuit Court; (c) an eligible State or Territory court

60 penalty units

48 After section 707

Insert:

707A Hindering or obstructing the Fair Work Ombudsman and inspectors etc.

(1) A person must not intentionally hinder or obstruct:

(a) the Fair Work Ombudsman or an inspector in the performance of his or her functions or the exercise of his or her powers as the Fair Work Ombudsman or an inspector; or

(b) an assistant referred to in section 710 assisting an inspector on premises; or

(c) a member of the staff of the Office of the Fair Work Ombudsman in the performance of his or her functions or the exercise of his or her powers in relation to an FWO notice.

Note: This subsection is a civil remedy provision (see Part 4-1).

(2) Subsection (1) does not apply if:

(a) the person has a reasonable excuse; or

(b) if the Fair Work Ombudsman or inspector referred to in paragraph (1)(a) or (b) (as the case requires) was required to show his or her identity card to the person under
Schedule 1 Amendments

Part 5 Hindering and obstructing the Fair Work Ombudsman and inspectors

subsection 708(3) or paragraph 711(3)(b)—the Fair Work Ombudsman or inspector:

(i) failed to do so; or

(ii) failed to tell the person of the effect of this section.

(3) A reference in subsection (1) to the Fair Work Ombudsman includes a reference to a delegate of the Fair Work Ombudsman.
Part 6—False or misleading information or documents

Fair Work Act 2009

49 At the end of section 535

Add:

(4) An employer must not make or keep a record for the purposes of this section that the employer knows is false or misleading.

Note: This subsection is a civil remedy provision (see Part 4-1).

(5) Subsection (4) does not apply if the record is not false or misleading in a material particular.

50 At the end of section 536

Add:

(3) An employer must not give a pay slip for the purposes of this section that the employer knows is false or misleading.

Note: This subsection is a civil remedy provision (see Part 4-1).

(4) Subsection (3) does not apply if the pay slip is not false or misleading in a material particular.

51 Subsection 539(2) (table item 29, column 1)

After “535(2)”, insert “535(4)”.

52 Subsection 539(2) (table item 29, column 1)

After “536(2)”, insert “536(3)”.

53 Subsection 539(2) (after table item 33)

Insert:

33A 718A(1) an inspector (a) the Federal Court; 60 penalty units
(b) the Federal Circuit Court;
(c) an eligible State or Territory court
Schedule 1 Amendments
Part 6 False or misleading information or documents

54 Paragraph 557(2)(n)
Omit “and (2)”, substitute “, (2) and (4)”.

55 Paragraph 557(2)(o)
Omit “and (2)”, substitute “, (2) and (3)”.

56 At the end of Division 3 of Part 5-2
Add:

Subdivision F—False or misleading information or documents

718A False or misleading information or documents

(1) A person must not give information or produce a document to the
Fair Work Ombudsman, an inspector, or a person referred to in
subsection 712A(2), (the official) exercising powers or performing
functions under, or in connection with, a law of the
Commonwealth if the person knows, or is reckless as to whether,
the information or the document:
(a) is false or misleading; or
(b) for information—omits any matter or thing without which the
information is misleading.

Note 1: This subsection is a civil remedy provision (see Part 4-1).
Note 2: Sections 137.1 and 137.2 of the Criminal Code create offences for
providing false or misleading information or documents.

(2) Subsection (1) does not apply as a result of paragraph (1)(a) if the
information or the document is not false or misleading in a material
particular.

(3) Subsection (1) does not apply as a result of paragraph (1)(b) if the
information did not omit any matter or thing without which the
information is misleading in a material particular.

(4) Subsection (1) does not apply to a person who produces a
document if the document is accompanied by a written statement
signed by the person or, in the case of a body corporate, by a
competent officer of the body corporate:
(a) stating that the document is, to the knowledge of the person,
false or misleading in a material particular; and
Amendments Schedule 1
False or misleading information or documents Part 6

(b) setting out, or referring to, the material particular in which
the document is, to the knowledge of the person, false or
misleading.

(5) Subsection (1) does not apply if, before the information was given
or the document was produced by a person to the official, the
official did not take reasonable steps to inform the person that the
person may be liable to a civil remedy for contravening
subsection (1).

(6) For the purposes of subsection (5), it is sufficient if the following
form of words is used:

“You may be liable to a civil remedy for giving false or misleading
information or producing false or misleading documents”.  

No. 2017  Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017  29
Part 7—Application and transitional provisions

Fair Work Act 2009

57 In the appropriate position in Schedule 1

Insert:

Part 4—Amendments made by the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017

15 Definitions

In this Part:


16 Application of amendments—unreasonable requirements to spend or pay amounts

Subsection 325(1) of the amended Act applies in relation to requirements made after this clause commences.

17 Saving of regulations—unreasonable deductions

Regulations in force, immediately before the commencement of this clause, for the purposes of subsection 326(2) of the Fair Work Act 2009 have effect after that commencement as if they had been made for the purposes of subsection 326(2) of the amended Act.

18 Application of amendments—increasing maximum penalties for contraventions of certain civil remedy provisions

(1) Sections 539, 557A and 557B of the amended Act apply in relation to conduct engaged in on or after the commencement of this Part.

(2) If:
(a) conduct was engaged in by a person before and after that
commencement; and
(b) the conduct is part of a course of conduct referred to in
subsection 557(1);
the conduct engaged in before that commencement is to be treated
as constituting a separate contravention from the conduct engaged
in after that commencement for the purposes of section 557.

(3) However, a court may still consider a contravention of a civil
remedy provision (whether or not the provision is referred to in
subsection 557(2)) by a person that occurred before the
commencement of this Part for the purposes of determining
whether a person’s conduct was part of a systematic pattern of
conduct referred to in paragraph 557A(1)(b).

19 Application of amendments—responsibility of responsible
franchisor entities and holding companies

(1) Section 558B of the amended Act applies in relation to
contraventions of civil remedy provisions by franchisee entities or
subsidiaries that occur after the end of the period of 6 weeks
beginning on the day this Part commences.

(2) To avoid doubt, in determining for the purposes of
paragraph 558B(1)(d) or (2)(c) of the amended Act whether a
person could reasonably be expected to have had knowledge as
referred to in that paragraph, a court may have regard to conduct
that occurred, or circumstances existing, before the end of the
period referred to in subclause (1).

20 Application of amendments—hindering or obstructing the Fair
Work Ombudsman and inspectors etc.

Section 707A of the amended Act applies in relation to conduct
engaged in at or after the commencement of this Part.

21 Application of power to give FWO notices

Sections 712A to 712D of the amended Act apply in relation to an
FWO notice given after this Part commences, whether the
investigation to which the notice relates is begun before or after the
commencement of this Part.
Schedule 1  Amendments  
Part 7  Application and transitional provisions

22 Application of amendments relating to self-incrimination etc.

Section 713 of the amended Act applies in relation to information given, records or documents produced or questions answered after the commencement of this Part.

23 Application of requirement for reports not to include information relating to an individual’s affairs

Section 714A of the amended Act applies in relation to reports prepared after the commencement of this Part.

24 Application of amendments—false or misleading information or documents

Subsections 535(4) and 536(3) and section 718A of the amended Act apply in relation to conduct engaged in after the commencement of this Part.