



# Disclosure requirements for bargaining representatives

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The *Fair Work Amendment (Corrupting Benefits) Act 2017* (the Amendment Act) amended the *Fair Work Act 2009* (the Act) to create new offences relating to corrupting benefits and added 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 on corrupting benefits offences](#).

## New disclosure requirements

Under the new sections 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 (section 179)
- employers (section 179A).



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## 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<sup>1</sup>. However, a contravention of the disclosure requirements will not preclude the approval of an enterprise agreement by the Fair Work Commission.<sup>2</sup>

## 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.

## What is a disclosable benefit for an employer?

Under section 179A(4) of the Act , 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.

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<sup>1</sup> section 4AA, Crimes Act 1914 defines the amount of a penalty unit.

<sup>2</sup> section 188A.



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## Disclosure document

Registered organisations and employers covered by a proposed agreement with a disclosable benefit must prepare a disclosure document in the prescribed form.<sup>3</sup> A copy of the disclosure document form can be accessed from [the Federal Register of Legislation](#).

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.<sup>4</sup>

The organisation and employer must not knowingly or recklessly make a false or misleading representation in a disclosure document.<sup>5</sup>

## 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.<sup>6</sup>

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.<sup>7</sup>

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<sup>3</sup> sections 179(1) & 179A(1), Schedule 2.1A, *Fair Work Regulations 2009*.

<sup>4</sup> sections 179(4) & 179A(3), regulations 2.06AA(1)(a) & (2)(a).

<sup>5</sup> sections 179(5) & 180(4C).

<sup>6</sup> section 179(3).

<sup>7</sup> section 180(4A).



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## 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.<sup>8</sup>

## What is the 'access period'?

The access period is the seven day period immediately before voting for the agreement commences.<sup>9</sup>

## Further information

If you have any further questions relating to the loan, grant and donation disclosure requirements in the statement or the financial report, please email the Fair Work Commission at [regorgs@fwc.gov.au](mailto:regorgs@fwc.gov.au).

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This guidance is not intended to be comprehensive. The Fair Work 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*.

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<sup>8</sup> section 180(4B).

<sup>9</sup> section 180(4).