

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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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
<b>Schedule 1—Amendments</b>		<b>3</b>
Part 1—Increasing maximum penalties for contraventions of certain civil remedy provisions		3
<i>Fair Work Act 2009</i>		3
Part 2—Liability of responsible franchisor entities and holding companies		8
<i>Fair Work Act 2009</i>		8
Part 3—Unreasonable requirements		14
<i>Fair Work Act 2009</i>		14
Part 4—Powers of the Fair Work Ombudsman		17
<i>Fair Work Act 2009</i>		17
Part 5—Hindering and obstructing the Fair Work Ombudsman and inspectors		25
<i>Fair Work Act 2009</i>		25
Part 6—False or misleading information or documents		27
<i>Fair Work Act 2009</i>		27
Part 7—Application and transitional provisions		30
<i>Fair Work Act 2009</i>		30



1     **A Bill for an Act to amend the *Fair Work Act 2009*,**  
2     **and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

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

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
12



1 **Schedule 1—Amendments**

2 **Part 1—Increasing maximum penalties for**  
3 **contraventions of certain civil remedy**  
4 **provisions**

5 *Fair Work Act 2009*

6 **1 Section 12**

7 Insert:

8 *serious contravention* has the meaning given by section 557A.

9 **2 Subsection 539(2) (after note 3)**

10 Insert:

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

13 **3 Subsection 539(2) (cell at table item 1, column 4)**

14 Repeal the cell, substitute:

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

15 **4 Subsection 539(2) (cell at table item 2, column 4)**

16 Repeal the cell, substitute:

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

17 **5 Subsection 539(2) (cell at table item 3, column 4)**

18 Repeal the cell, substitute:

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**Schedule 1** Amendments

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

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

1 **6 Subsection 539(2) (cell at table item 4, column 4)**

2 Repeal the cell, substitute:

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

3 **7 Subsection 539(2) (cell at table item 5, column 4)**

4 Repeal the cell, substitute:

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

5 **8 Subsection 539(2) (cell at table item 7, column 4)**

6 Repeal the cell, substitute:

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

7 **9 Subsection 539(2) (cell at table item 8, column 4)**

8 Repeal the cell, substitute:

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

1     **10 Subsection 539(2) (cell at table item 9, column 4)**

2             Repeal the cell, substitute:

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

3     **11 Subsection 539(2) (cell at table item 10, column 4)**

4             Repeal the cell, substitute:

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

5     **12 Subsection 539(2) (cell at table item 29, column 4)**

6             Repeal the cell, substitute:

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

7     **13 After section 557**

8             Insert:

**Schedule 1** Amendments

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

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1 **557A Serious contravention of civil remedy provisions**

- 2 (1) A contravention of a civil remedy provision by a person is a  
3 **serious contravention** if the person's conduct constituting the  
4 contravention was:  
5 (a) deliberate; and  
6 (b) part of a systematic pattern of conduct relating to one or more  
7 other persons.

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

- 10 (2) In determining whether the person's conduct constituting the  
11 contravention of the provision was part of a systematic pattern of  
12 conduct, a court may have regard to:  
13 (a) the number of contraventions (the **relevant contraventions**)  
14 of this Act committed by the person; and  
15 (b) the period over which the relevant contraventions occurred;  
16 and  
17 (c) the number of other persons affected by the relevant  
18 contraventions; and  
19 (d) except if the provision contravened is section 535—whether  
20 the person also contravened subsection 535(1), (2) or (4) by  
21 failing to make or keep, in accordance with that section, an  
22 employee record relating to the conduct constituting the  
23 relevant contraventions; and  
24 (e) except if the provision contravened is section 536—whether  
25 the person also contravened subsection 536(1), (2) or (3) by  
26 failing to give, in accordance with that section, a pay slip  
27 relating to the conduct constituting the relevant  
28 contraventions.
- 29 (3) Subsection (2) does not limit the matters that a court may have  
30 regard to.
- 31 (4) Subsection 557(1) does not apply for the purposes of determining  
32 whether the person's conduct was part of a systematic pattern of  
33 conduct.
- 34 (5) Subsection (4) does not otherwise affect the operation of  
35 subsection 557(1) in relation to serious contraventions of civil  
36 remedy provisions.
-

- 1                   (6) If a person is applying for an order in relation to a serious  
2                   contravention of a civil remedy provision, the person's application  
3                   under subsection 539(2) must specify the relevant serious  
4                   contravention.
- 5                   (7) If, in proceedings for an order in relation to a serious contravention  
6                   of a civil remedy provision, the court:  
7                   (a) is not satisfied that the person has committed a serious  
8                   contravention against that provision; and  
9                   (b) is satisfied that the person has contravened that provision;  
10                  the court may make a pecuniary penalty order against the person  
11                  not for the serious contravention but for the contravention of that  
12                  provision.

13                  **557B Liability of bodies corporate for serious contravention**

- 14                  (1) For the purposes of subsection 557A(1), a contravention of a civil  
15                  remedy provision by a body corporate is deliberate if the body  
16                  corporate expressly, tacitly or impliedly authorised the  
17                  contravention.
- 18                  (2) This section does not limit section 793.

1 **Part 2—Liability of responsible franchisor entities**  
2 **and holding companies**

3 ***Fair Work Act 2009***

4 **14 Section 12**

5 Insert:

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

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

9 **15 Section 537 (after the paragraph relating to Division 4)**

10 Insert:

11 

Division 4A imposes obligations on responsible franchisor entities 12 in relation to certain contraventions of civil remedy provisions by 13 franchisee entities and on holding companies in relation to certain 14 contraventions of civil remedy provisions by subsidiaries.
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15 **16 Subsection 539(2) (after table item 29)**

16 Insert:

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**Part 4-1—Civil remedies**

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29A	558B(1)	(a) an employee;	(a) the Federal Court;	60 penalty
	558B(2)	(b) an employee organisation;	(b) the Federal Circuit Court	units
		(c) an inspector		

18 **17 After Division 4 of Part 4-1**

19 Insert:

1 **Division 4A—Responsibility of responsible franchisor**  
2 **entities and holding companies for certain**  
3 **contraventions**

4 **558A Meaning of *franchisee entity* and *responsible franchisor entity***

- 5 (1) A person is a *franchisee entity* of a franchise if:  
6 (a) the person is a franchisee (including a subfranchisee) in  
7 relation to the franchise; and  
8 (b) the business conducted by the person under the franchise is  
9 substantially or materially associated with intellectual  
10 property relating to the franchise.
- 11 (2) A person is a *responsible franchisor entity* for a franchisee entity  
12 of a franchise if:  
13 (a) the person is a franchisor (including a subfranchisor) in  
14 relation to the franchise; and  
15 (b) the person has a significant degree of influence or control  
16 over the franchisee entity's affairs.

17 **558B Responsibility of responsible franchisor entities and holding**  
18 **companies for certain contraventions**

19 *Responsible franchisor entities*

- 20 (1) A person contravenes this subsection if:  
21 (a) an employer who is a franchisee entity of a franchise  
22 contravenes a civil remedy provision referred to in  
23 subsection (7); and  
24 (b) the person is a responsible franchisor entity for the franchisee  
25 entity; and  
26 (c) the contravention by the franchisee entity occurs in the  
27 franchisee entity's capacity as a franchisee entity; and  
28 (d) either:  
29 (i) the responsible franchisor entity or an officer (within the  
30 meaning of the *Corporations Act 2001*) of the  
31 responsible franchisor entity knew or could reasonably  
32 be expected to have known that the contravention by the  
33 franchisee entity would occur; or

**Schedule 1** Amendments

**Part 2** Liability of responsible franchisor entities and holding companies

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

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

9 *Holding companies*

- 10 (2) A person contravenes this subsection if:  
11 (a) the person is a body corporate; and  
12 (b) a subsidiary (within the meaning of the *Corporations Act*  
13 *2001*) of the body corporate who is an employer contravenes  
14 a civil remedy provision referred to in subsection (7); and  
15 (c) either:  
16 (i) the body corporate or an officer (within the meaning of  
17 the *Corporations Act 2001*) of the body corporate knew  
18 or could reasonably be expected to have known that the  
19 contravention by the subsidiary would occur; or  
20 (ii) at the time of the contravention by the subsidiary, the  
21 body corporate or an officer (within the meaning of the  
22 *Corporations Act 2001*) of the body corporate knew or  
23 could reasonably be expected to have known that a  
24 contravention by the subsidiary of the same or a similar  
25 character was likely to occur.

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

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

- 29 (3) A person does not contravene subsection (1) or (2) if, as at the time  
30 of the contravention referred to in paragraph (1)(a) or (2)(b), the  
31 person had taken reasonable steps to prevent a contravention by the  
32 franchisee entity or subsidiary of the same or a similar character.
- 33 (4) For the purposes of subsection (3), in determining whether a  
34 person took reasonable steps to prevent a contravention by a  
35 franchisee entity or subsidiary (the *contravening employer*) of the

1 same or a similar character, a court may have regard to all relevant  
2 matters, including the following:

- 3 (a) the size and resources of the franchise or body corporate (as  
4 the case may be);
- 5 (b) the extent to which the person had the ability to influence or  
6 control the contravening employer's conduct in relation to  
7 the contravention referred to in paragraph (1)(a) or (2)(b) or a  
8 contravention of the same or a similar character;
- 9 (c) any action the person took directed towards ensuring that the  
10 contravening employer had a reasonable knowledge and  
11 understanding of the requirements under the applicable  
12 provisions referred to in subsection (7);
- 13 (d) the person's arrangements (if any) for assessing the  
14 contravening employer's compliance with the applicable  
15 provisions referred to in subsection (7);
- 16 (e) the person's arrangements (if any) for receiving and  
17 addressing possible complaints about alleged underpayments  
18 or other alleged contraventions of this Act within:
- 19 (i) the franchise; or  
20 (ii) the body corporate or any subsidiary (within the  
21 meaning of the *Corporations Act 2001*) of the body  
22 corporate;
- 23 as the case may be;
- 24 (f) the extent to which the person's arrangements (whether legal  
25 or otherwise) with the contravening employer encourage or  
26 require the contravening employer to comply with this Act or  
27 any other workplace law.

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

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

31 (6) To avoid doubt, a reference in paragraph (1)(a) or (2)(b) to a  
32 contravention by a franchisee entity or subsidiary includes any  
33 contravention whether or not an order has been sought or made  
34 against the franchisee entity or subsidiary under Division 2 for the  
35 contravention.

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*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:

- 1 (a) a person pays an amount to, or on behalf of, an employee  
2 pursuant to an order under subsection 545(1) relating to a  
3 contravention by the person of subsection 558B(1) or (2) in  
4 relation to a franchisee entity or subsidiary (the *contravening*  
5 *employer*); and  
6 (b) the person has not otherwise recovered from the contravening  
7 employer an amount (the *recoverable amount*) equal to the  
8 amount paid by the person.
- 9 (2) The person may commence proceedings against the contravening  
10 employer for payment to the person of so much of the recoverable  
11 amount as has not been recovered.
- 12 (3) The proceedings may be commenced in:  
13 (a) the Federal Court; or  
14 (b) the Federal Circuit Court; or  
15 (c) an eligible State or Territory court.
- 16 (4) The court may make an order requiring the contravening employer  
17 to pay the person the recoverable amount (or so much of it as has  
18 not been recovered from the contravening employer), if the court is  
19 satisfied that this section applies as referred to in subsection (1).
- 20 (5) In making the order, the court must, on application, include an  
21 amount of interest in the sum ordered, unless good cause is shown  
22 to the contrary.
- 23 (6) Without limiting subsection (5), in determining the amount of  
24 interest, the court must take into account the period between the  
25 day when the amount referred to in paragraph (1)(a) was paid by  
26 the person and the day when the order is made.
- 27 (7) Proceedings cannot be commenced under this section more than 6  
28 years after the time when the person paid the amount referred to in  
29 paragraph (1)(a).

1 **Part 3—Unreasonable requirements**

2 *Fair Work Act 2009*

3 **18 Section 151**

4 Repeal the section, substitute:

5 **151 Terms about payments and deductions for benefit of employer**  
6 **etc.**

7 A modern award must not include a term that has no effect because  
8 of:

- 9 (a) subsection 326(1) (which deals with unreasonable deductions  
10 for the benefit of an employer); or  
11 (b) subsection 326(3) (which deals with unreasonable  
12 requirements to spend or pay an amount); or  
13 (c) subsection 326(4) (which deals with deductions or payments  
14 in relation to employees under 18).

15 **19 Subsection 253(1) (note 2)**

16 Repeal the note, substitute:

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

20 **20 Division 2 of Part 2-9 (heading)**

21 Repeal the heading, substitute:

22 **Division 2—Payment of wages etc.**

23 **21 Section 325 (heading)**

24 Repeal the heading, substitute:

25 **325 Unreasonable requirements to spend or pay amount**

26 **22 Subsection 325(1)**

27 Repeal the subsection, substitute:

- 1 (1) An employer must not directly or indirectly require an employee to  
2 spend, or pay to the employer or another person, an amount of the  
3 employee's money or the whole or any part of an amount payable  
4 to the employee in relation to the performance of work, if:  
5 (a) the requirement is unreasonable in the circumstances; and  
6 (b) for a payment—the payment is directly or indirectly for the  
7 benefit of the employer or a party related to the employer.

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

9 **23 Section 326**

10 Repeal the section, substitute:

11 **326 Certain terms have no effect**

12 *Unreasonable deductions for benefit of employer*

- 13 (1) A term of a modern award, an enterprise agreement or a contract of  
14 employment has no effect to the extent that the term permits, or has  
15 the effect of permitting, an employer to deduct an amount from an  
16 amount that is payable to an employee in relation to the  
17 performance of work, if the deduction is:  
18 (a) directly or indirectly for the benefit of the employer or a  
19 party related to the employer; and  
20 (b) unreasonable in the circumstances.
- 21 (2) The regulations may prescribe circumstances in which a deduction  
22 referred to in subsection (1) is or is not reasonable.

23 *Unreasonable requirements to spend or pay an amount*

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

1                                    *Deductions or payments in relation to employees under 18*

- 2                    (4) A term of a modern award, an enterprise agreement or a contract of  
3                    employment has no effect to the extent that the term:  
4                        (a) permits, or has the effect of permitting, an employer to  
5                                    deduct an amount from an amount that is payable to an  
6                                    employee in relation to the performance of work; or  
7                        (b) requires, or has the effect of requiring, an employee to make  
8                                    a payment to an employer or another person;  
9                    if the employee is under 18 and the deduction or payment is not  
10                    agreed to in writing by a parent or guardian of the employee.

11                    **24 Section 327 (heading)**

12                    Repeal the heading, substitute:

13                    **327 Things given or provided, and amounts required to be spent or**  
14                    **paid, in contravention of this Division**

15                    **25 Paragraph 327(b)**

16                    Repeal the paragraph, substitute:

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

22                    **26 Paragraph 557(2)(i)**

23                    Repeal the paragraph, substitute:

- 24                        (i) subsection 325(1) (which deals with unreasonable  
25                                    requirements to spend or pay amounts);

1 **Part 4—Powers of the Fair Work Ombudsman**

2 ***Fair Work Act 2009***

3 **27 Section 12**

4 Insert:

5 *FWO notice*: see subsection 712A(1).

6 **28 Subsection 539(2) (after table item 32)**

7 Insert:

8

32A	712B(1)	an inspector	(a) the Federal Court;	600 penalty
			(b) the Federal	units
			Circuit Court;	
			(c) an eligible State	
			or Territory court	

9 **29 Subsection 683(1)**

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

12 **30 After subsection 683(1)**

13 Insert:

14 (1A) The Fair Work Ombudsman must not delegate his or her functions  
15 or powers as an inspector.

16 (1B) The Fair Work Ombudsman may delegate to a member of the staff  
17 of the Office of the Fair Work Ombudsman who is an SES  
18 employee or an acting SES employee:

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

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

23 Note: *SES employee* and *acting SES employee* are defined in the *Acts*  
24 *Interpretation Act 1901*.

1 **31 At the end of subsection 685(1)**

2 Add:

3 Note: A report must not include information relating to an individual's  
4 affairs (see section 714A).

5 **32 At the end of section 686**

6 Add:

7 Note: An annual report must not include information relating to an  
8 individual's affairs (see section 714A).

9 **33 Subdivision D of Division 3 of Part 5-2 (heading)**

10 Repeal the heading, substitute:

11 **Subdivision D—Functions and powers of Fair Work**  
12 **Inspectors—general**

13 **34 Section 703**

14 Before “The functions”, insert “(1)”.

15 **35 At the end of section 703**

16 Add:

17 (2) To avoid doubt, the power to issue an FWO notice under  
18 section 712A is not a compliance power.

19 **36 Before section 708**

20 Insert:

21 **Subdivision DA—Power to enter premises**

22 **37 Before section 711**

23 Insert:

24 **Subdivision DB—Powers to ask questions and require records**  
25 **and documents**

26 **38 After section 712**

27 Insert:

1 **712A Fair Work Ombudsman may give FWO notice**

2 *Fair Work Ombudsman may require information, documents etc.*

- 3 (1) The Fair Work Ombudsman may give a written notice (the ***FWO***  
4 ***notice***), in the form prescribed by the regulations (if any), to a  
5 person if the Fair Work Ombudsman reasonably believes that the  
6 person:  
7 (a) has information or documents relevant to an investigation by  
8 an inspector into a suspected contravention of this Act; or  
9 (b) is capable of giving evidence that is relevant to such an  
10 investigation.
- 11 (2) The notice may require the person:  
12 (a) to give the information to the Fair Work Ombudsman, or a  
13 specified member of the staff of the Office of the Fair Work  
14 Ombudsman, by the time, and in the manner and form,  
15 specified in the notice; or  
16 (b) to produce the documents to the Fair Work Ombudsman, or a  
17 specified member of the staff of the Office of the Fair Work  
18 Ombudsman, by the time, and in the manner, specified in the  
19 notice; or  
20 (c) to attend before the Fair Work Ombudsman, or a specified  
21 member of the staff of the Office of the Fair Work  
22 Ombudsman who is an SES employee or an acting SES  
23 employee, at the time and place specified in the notice, and  
24 answer questions relevant to the investigation.

25 The time specified under paragraph (a), (b) or (c) must be at least  
26 14 days after the notice is given.

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

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

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

1                                    *Legal representation*

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

5                                    *Oath or affirmation*

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

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

14                                   **712B Requirement to comply with FWO notice**

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

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

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

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

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

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

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

27                                   **712C Payment for expenses incurred in attending as required by an**  
28                                   **FWO notice**

29                                   (1) A person who attends as required by an FWO notice is (subject to  
30                                   subsection (2)) entitled to be paid fees and allowances, fixed by or  
31                                   calculated in accordance with the regulations, for reasonable  
32                                   expenses (including legal expenses) incurred by the person in so  
33                                   attending.

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- 1 (2) The person is not entitled to be paid for expenses under this section  
2 unless the person:  
3 (a) applies, in writing, to the Fair Work Ombudsman for  
4 payment of the expenses within 3 months after the  
5 attendance; and  
6 (b) provides to the Fair Work Ombudsman sufficient evidence to  
7 establish that the person incurred the expenses.
- 8 (3) An application under paragraph (2)(a) must:  
9 (a) if a form is prescribed by the regulations—be in that form;  
10 and  
11 (b) include any information prescribed by the regulations.

### 12 **712D Protection from liability relating to FWO notices**

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

### 20 **Subdivision DC—Other rules relating to answers, records and** 21 **documents**

#### 22 **39 Section 713**

23 Repeal the section, substitute:

#### 24 **713 Self-incrimination etc.**

25 *Excuses that are not available*

- 26 (1) A person is not excused from giving information, producing a  
27 record or document, or answering a question, under  
28 paragraph 709(d) or subsection 712(1), or under an FWO notice,  
29 on the ground that to do so might tend to incriminate the person or  
30 otherwise expose the person to a penalty or other liability.

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

- 3                    (2) In the case of an individual who produces a record or document,  
4                    under paragraph 709(d) or subsection 712(1), none of the  
5                    following:  
6                    (a) the record or document produced;  
7                    (b) producing the record or document;  
8                    (c) any information, document or thing obtained as a direct or  
9                    indirect consequence of producing the record or document;  
10                  is admissible in evidence against the individual in criminal  
11                  proceedings, other than:  
12                  (d) proceedings for an offence against section 137.1 or 137.2 of  
13                  the *Criminal Code* that relates to this Act (false or misleading  
14                  information or documents); and  
15                  (e) proceedings for an offence against section 149.1 of the  
16                  *Criminal Code* that relates to this Act (obstruction of  
17                  Commonwealth officials).

18                                    *Use indemnity in relation to FWO notices*

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

33                    **40 After section 713A**

34                    Insert:

1 **713AA Legal professional privilege**

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

5 **41 Subsection 714(1)**

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

8 **42 Subsection 714(1)**

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

10 **43 Subsection 714(2)**

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

13 **44 Subsection 714(2)**

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

15 **45 After section 714**

16 Insert:

17 **714A Reports not to include information relating to an individual’s**  
18 **affairs**

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

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

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

30 (2) For the purposes of applying paragraph (1)(b) to information  
31 relating to a particular individual’s affairs, the context in which the

**Schedule 1** Amendments

**Part 4** Powers of the Fair Work Ombudsman

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

4 **46 Before section 715**

5 Insert:

6 **Subdivision DD—Enforceable undertakings and compliance**  
7 **notices**

1       **Part 5—Hindering and obstructing the Fair Work**  
2                               **Ombudsman and inspectors**

3       ***Fair Work Act 2009***

4       **47 Subsection 539(2) (before table item 31, after the**  
5                               **subheading “Part 5-2—Office of the Fair Work**  
6                               **Ombudsman”)**

7               Insert:

8

30A	707A(1)	an inspector	(a) the Federal Court;	60 penalty
			(b) the Federal Circuit Court;	units
			(c) an eligible State or Territory court	

9       **48 After section 707**

10              Insert:

11       **707A Hindering or obstructing the Fair Work Ombudsman and**  
12                               **inspectors etc.**

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

- 14                      (a) the Fair Work Ombudsman or an inspector in the  
15                               performance of his or her functions or the exercise of his or  
16                               her powers as the Fair Work Ombudsman or an inspector; or  
17                      (b) an assistant referred to in section 710 assisting an inspector  
18                               on premises; or  
19                      (c) a member of the staff of the Office of the Fair Work  
20                               Ombudsman in the performance of his or her functions or the  
21                               exercise of his or her powers in relation to an FWO notice.

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

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

- 24                      (a) the person has a reasonable excuse; or  
25                      (b) if the Fair Work Ombudsman or inspector referred to in  
26                               paragraph (1)(a) or (b) (as the case requires) was required to  
27                               show his or her identity card to the person under

**Schedule 1** Amendments

**Part 5** Hindering and obstructing the Fair Work Ombudsman and inspectors

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- 1 subsection 708(3) or paragraph 711(3)(b)—the Fair Work  
2 Ombudsman or inspector:  
3 (i) failed to do so; or  
4 (ii) failed to tell the person of the effect of this section.
- 5 (3) A reference in subsection (1) to the Fair Work Ombudsman  
6 includes a reference to a delegate of the Fair Work Ombudsman.

1 **Part 6—False or misleading information or**  
2 **documents**

3 ***Fair Work Act 2009***

4 **49 At the end of section 535**

5 Add:

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

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

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

11 **50 At the end of section 536**

12 Add:

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

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

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

18 **51 Subsection 539(2) (table item 29, column 1)**

19 After “535(2)”, insert “535(4)”.

20 **52 Subsection 539(2) (table item 29, column 1)**

21 After “536(2)”, insert “536(3)”.

22 **53 Subsection 539(2) (after table item 33)**

23 Insert:

33A	718A(1)	an inspector	(a) the Federal Court;	60 penalty
			(b) the Federal	units
			Circuit Court;	
			(c) an eligible State	
			or Territory court	

1 **54 Paragraph 557(2)(n)**

2 Omit “and (2)”, substitute “, (2) and (4)”.

3 **55 Paragraph 557(2)(o)**

4 Omit “and (2)”, substitute “, (2) and (3)”.

5 **56 At the end of Division 3 of Part 5-2**

6 Add:

7 **Subdivision F—False or misleading information or documents**

8 **718A False or misleading information or documents**

9 (1) A person must not give information or produce a document to the  
10 Fair Work Ombudsman, an inspector, or a person referred to in  
11 subsection 712A(2), (the *official*) exercising powers or performing  
12 functions under, or in connection with, a law of the  
13 Commonwealth if the person knows, or is reckless as to whether,  
14 the information or the document:

15 (a) is false or misleading; or

16 (b) for information—omits any matter or thing without which the  
17 information is misleading.

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

19 Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for  
20 providing false or misleading information or documents.

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

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

27 (4) Subsection (1) does not apply to a person who produces a  
28 document if the document is accompanied by a written statement  
29 signed by the person or, in the case of a body corporate, by a  
30 competent officer of the body corporate:

31 (a) stating that the document is, to the knowledge of the person,  
32 false or misleading in a material particular; and

- 1 (b) setting out, or referring to, the material particular in which  
2 the document is, to the knowledge of the person, false or  
3 misleading.
- 4 (5) Subsection (1) does not apply if, before the information was given  
5 or the document was produced by a person to the official, the  
6 official did not take reasonable steps to inform the person that the  
7 person may be liable to a civil remedy for contravening  
8 subsection (1).
- 9 (6) For the purposes of subsection (5), it is sufficient if the following  
10 form of words is used:
- 11 “You may be liable to a civil remedy for giving false or misleading  
12 information or producing false or misleading documents”.

1 **Part 7—Application and transitional provisions**

2 *Fair Work Act 2009*

3 **57 In the appropriate position in Schedule 1**

4 Insert:

5 **Part 4—Amendments made by the Fair Work**  
6 **Amendment (Protecting Vulnerable**  
7 **Workers) Act 2017**  
8

9 **15 Definitions**

10 In this Part:

11 *amended Act* means this Act as amended by the *Fair Work*  
12 *Amendment (Protecting Vulnerable Workers) Act 2017*.

13 **16 Application of amendments—unreasonable requirements to**  
14 **spend or pay amounts**

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

17 **17 Saving of regulations—unreasonable deductions**

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

22 **18 Application of amendments—increasing maximum penalties for**  
23 **contraventions of certain civil remedy provisions**

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

26 (2) If:

- 1 (a) conduct was engaged in by a person before and after that  
2 commencement; and  
3 (b) the conduct is part of a course of conduct referred to in  
4 subsection 557(1);  
5 the conduct engaged in before that commencement is to be treated  
6 as constituting a separate contravention from the conduct engaged  
7 in after that commencement for the purposes of section 557.
- 8 (3) However, a court may still consider a contravention of a civil  
9 remedy provision (whether or not the provision is referred to in  
10 subsection 557(2)) by a person that occurred before the  
11 commencement of this Part for the purposes of determining  
12 whether a person's conduct was part of a systematic pattern of  
13 conduct referred to in paragraph 557A(1)(b).

14 **19 Application of amendments—responsibility of responsible**  
15 **franchisor entities and holding companies**

- 16 (1) Section 558B of the amended Act applies in relation to  
17 contraventions of civil remedy provisions by franchisee entities or  
18 subsidiaries that occur after the end of the period of 6 weeks  
19 beginning on the day this Part commences.
- 20 (2) To avoid doubt, in determining for the purposes of  
21 paragraph 558B(1)(d) or (2)(c) of the amended Act whether a  
22 person could reasonably be expected to have had knowledge as  
23 referred to in that paragraph, a court may have regard to conduct  
24 that occurred, or circumstances existing, before the end of the  
25 period referred to in subclause (1).

26 **20 Application of amendments—hindering or obstructing the Fair**  
27 **Work Ombudsman and inspectors etc.**

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

30 **21 Application of power to give FWO notices**

31 Sections 712A to 712D of the amended Act apply in relation to an  
32 FWO notice given after this Part commences, whether the  
33 investigation to which the notice relates is begun before or after the  
34 commencement of this Part.

1       **22 Application of amendments relating to self-incrimination etc.**

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

5       **23 Application of requirement for reports not to include information**  
6                       **relating to an individual’s affairs**

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

9       **24 Application of amendments—false or misleading information or**  
10                       **documents**

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