

IR OMNIBUS BILL – FACT SHEET



Compliance and Enforcement

New Criminal Offence and Penalties

- A new criminal offence relating to underpayments will apply where a national system employer dishonestly engages in a deliberate and systematic pattern of underpaying one or more of their employees. Inadvertent errors, bona fide miscalculations or mistakes will not meet this criminal standard of dishonesty
 - The maximum penalty will be \$1.11 million and four years' imprisonment for individuals, and fines of up to \$5.5 million for a body corporate.
- Under the *Corporations Act 2001* (Cth), a person may be disqualified from managing a corporation if they are convicted of a dishonesty offence that is punishable by a term of imprisonment for at least 3 months. This new offence under the *Fair Work Act 2009* (Cth) (**FW Act**) is intended to have the potential to lead to disqualification of directors.

Court Limits and Powers

- The range of orders the Federal Court and Federal Circuit Court may impose include adverse publicity orders.
- With the small claims increasing from \$20,000 to \$50,000 courts will be able to refer small claims matters to the Fair Work Commission for conciliation and arbitration (with consent). Successful small claims applicants may also be able to recover filing fees from the respondent. The Court may also order costs against a party that unreasonably refuses to participate in an FWC process.
- There have been increases to the base maximum civil penalties for so named "remuneration-related contraventions" by 50 per cent, which include civil remedy provisions relating to the underpayment of wages or other monetary entitlements of employees, as well as contraventions of industrial instruments, workplace determinations and provisions with respect to payments of, and deductions from, employee wages.
- Civil penalties for remuneration related contraventions will be assessed to the greater of the value of the applicable civil penalty or the value benefit obtained by the person in breaching the remuneration related contravention, referred to as the 'value of the benefit' method for penalty calculation (appropriately multiplied depending on the nature of the contravention, whether the contravenor was an individual, small business or body corporate).

New Civil Contraventions

- A new civil contravention has been introduced that prohibits employers from publishing (or causing to be published) job advertisements with pay rates specified at less than the relevant national minimum wage.
 - The maximum penalty will be \$13,320 for individuals, and \$66,600 for bodies corporate. This is commensurate with penalties for misrepresentations under section 345 of the FW Act.
- There are increased civil pecuniary penalties for non-compliance with a compliance notice and the maximum penalty payable under an infringement notice has increased by 50 per cent to \$9,600 for an individual, and \$49,950 for a body corporate.

Certainty of Process

- The proposed Bill provides certainty about the decision-making process the FWO follows in relation to undertakings and inserts a specific requirement for the FWO to publish information relating to the circumstances in which enforcement proceedings will be commenced or deferred.
- The Bill also sets out a non-exhaustive list of factors (including the circumstances, nature and gravity of the contravention, and the person's willingness to address its impact) the FWO may take into account in deciding whether to accept an enforceable undertaking.
- Finally, there is an increased maximum penalty for sham contracting contraventions. The penalty has increased by 50 per cent to \$19,980 for an individual, and \$99,900 for a body corporate.

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