

CIVIL REMEDY PROVISIONS

Legislation

The [Fair Work Act \(2009\)](#) (the “Act”) imposes penalties on certain parties whom fail to comply with certain sections of the Act. Each contravention has an attached monetary amount which is the maximum penalty that can be imposed on the party for a breach.

One penalty unit is currently set at \$222 as defined by the [Crimes Amendment \(Penalty Unit\) Act 2017](#)

Fair Work Act 2009 - Section 539

Applications for orders in relation to contraventions of civil remedy provisions

(1) A provision referred to in column 1 of an item in the table in subsection (2) is a civil remedy provision

(2) For each civil remedy provision, the persons referred to in column 2 of the item may, subject to sections 540 and 544 and

Subdivision B, apply to the courts referred to in column 3 of the item for orders in relation to a contravention or proposed contravention of the provision, including the maximum penalty referred to in column 4 of the item.

Note 1: Civil remedy provisions within a single Part may be grouped together in a single item of the table.

Note 2: Applications cannot be made by an inspector in relation to a contravention of a civil remedy provision by a person in certain cases where an undertaking or compliance notice has been given (see subsections 715(4) and 716(4A)).

Note 3: The regulations may also prescribe persons for the purposes of an item in column 2 of the table (see subsection 540(8)).

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

Depending on the contravention, an employee, employee organisation, employer association or the Fair Work Inspector may make an application for an order relating to contraventions. In some cases, a prospective employee, a person affected by the contravention or industrial association an employee organisation covered by the enterprise agreement or workplace determination concerned or an applicant for the protected action ballot order may apply to the courts.

The allegations can be heard by the Federal Court, Federal Circuit Court, an eligible State or Territory court, Fair Work Inspector, depending on the contravention.

Legislation

Section	Civil remedy provision	Maximum penalty
44(1)	Contravening the National Employment Standards An employer must not contravene a provision of the National Employment Standards	Serious contravention (600 penalty units) Otherwise (60 penalty units)

45	<p>Contravening a modern award</p> <p>A person must not contravene a term of a modern award.</p>	<p>Serious contravention (600 penalty units)</p> <p>Otherwise (60 penalty units)</p>
50	<p>Contravening an enterprise agreement</p> <p>A person must not contravene a term of an enterprise agreement.</p>	<p>Serious contravention (600 penalty units)</p> <p>Otherwise (60 penalty units)</p>

Enterprise Agreements

Section	Civil remedy provision	Maximum penalty
179	<p>Disclosure by organisations that are bargaining representatives</p> <p>If an organisation is a bargaining representative for a proposed enterprise agreement (that is not a Greenfields agreement) and the organisation is not an employer that will be covered by the agreement; and as a direct or indirect consequence of the operation of one or more terms of the agreement (the <i>beneficial terms</i>), the organisation or a person mentioned in subsection (2) will, or can reasonably be expected to, receive or obtain (directly or indirectly) a section 179 disclosable benefit (each such person is a <i>beneficiary</i>);</p> <p>The organisation must take all reasonable steps to ensure that, in the time required by subsection (3), each employer that will be covered by the agreement is given a document in accordance with subsection (4).</p> <p>The organisation must not knowingly or recklessly make a false or misleading representation in the document provided in accordance with this clause (see below).</p>	60 penalty units
180 (4A) 180 (4B) 180 (4C)	Employees must be given a copy of the disclosure document prepared in accordance with clause 179.	60 penalty units
233	<p>Contravening a bargaining order</p> <p>A person to whom a bargaining order applies must not contravene a term of the order.</p>	60 penalty units

Workplace determinations

Section	Civil remedy provision	Maximum penalty
280	A person must not contravene a term of a workplace determination	Serious contravention (600 penalty units) Otherwise (60 penalty units)

Minimum wages

Section	Civil remedy provision	Maximum penalty
293	Contravening a National Minimum Wage order (made in an annual wage review)	Serious contravention (600 penalty units) Otherwise (60 penalty units)

Equal remuneration

Section	Civil remedy provision	Maximum penalty
293	An employer must not contravene a term of an equal remuneration order	Serious contravention (600 penalty units) Otherwise (60 penalty units)

Other terms and conditions of employment

Section	Civil remedy provision	Maximum penalty
323	Method and frequency of payment An employer must pay an employee for performance of work in full, by an acceptable method of payment and at least monthly.	Serious contravention (600 penalty units) Otherwise (60 penalty units)
325	Unreasonable requirements to spend amount An employer may not require an employee or prospective employee to spend an amount of their money in relation to the performance of work if the requirement is unreasonable or if the payment is for the benefit of the employer.	Serious contravention (600 penalty units) Otherwise (60 penalty units)
328	Employer obligations in relation to guarantee of annual earnings Before giving a guarantee of annual earnings to an employee, the employer must notify that their	Serious contravention (600 penalty units) Otherwise (60 penalty units)

	applicable modern award will not operate during the period of the guarantee	
325 (1A)	<p>An employer (the prospective employer) must not directly or indirectly require another person (the prospective employee) to spend, or pay to the prospective employer or any other person, an amount of the prospective employee's money if:</p> <p>(a) the requirement is in connection with employment or potential employment of the prospective employee by the prospective employer; and</p> <p>(b) the requirement is unreasonable in the circumstances; and</p> <p>(c) the payment is directly or indirectly for the benefit of the prospective employer or a party related to the prospective employer.</p>	<p>Serious contravention (600 penalty units)</p> <p>Otherwise (60 penalty units)</p>

General Protections

Section	Civil remedy provision	Maximum penalty
340	<p>Protection against adverse action.</p> <p>A person must not take adverse action due to a person having a workplace right, exercising a workplace right because of a workplace right, has exercised a workplace right or to prevent the exercise of a workplace right</p>	60 penalty units
343	<p>Coercion</p> <p>A person must not coerce another person to exercise/not exercise a workplace right or to exercise a workplace right in a particular way</p>	60 penalty units
344	<p>Undue influence or pressure</p> <p>Employer must not exert pressure on an employee to:</p> <ul style="list-style-type: none"> - Make or not make an agreement under the NES - Make or not make an agreement under a modern award/EBA - Agree to or terminate an IFA - Accept a guarantee of annual earning - Agree or not agree to a deduction from amounts payable to the employee in relation to the performance of work 	60 penalty units

345	<p>Misrepresentations</p> <p>A person must not knowingly make a false or misleading representation about:</p> <ul style="list-style-type: none"> - The workplace rights of another person - The exercise, or the effect of the exercise, of a workplace right by another person 	60 penalty units
346	<p>A person must not take adverse action against another person because that person is or is not a member of an industrial association OR proposed to be engaged in an industrial association</p>	60 penalty units
348	<p>Coercion</p> <p>A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person, or a third person, to engage in industrial activity.</p>	60 penalty units
349	<p>Misrepresentations</p> <p>A person must not knowingly make a false/misleading representation about another person's obligation to engage in industrial activity or another person's obligation to disclose whether they are a member of an industrial association or not</p>	60 penalty units
350	<p>Inducements – membership action</p> <p>An employer must not induce an employee to take, or propose to take, membership action.</p> <p>A person who has entered into a contract for services with an independent contractor must not induce the independent contractor to take, or propose to take, membership action.</p>	60 penalty units
351	<p>Discrimination</p> <p>An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer responsibilities, pregnancy, religion, political opinion, national extraction or social origin.</p>	60 penalty units
352	<p>Temporary absence--illness or injury</p> <p>An employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury of a kind prescribed by the regulations</p>	60 penalty units
353	<p>Bargaining services fees</p> <p>An industrial association must not demand a payment of a bargaining services fee. This is a fee payable to an industrial association. Bargaining services are services that are provided by an industrial association in relation</p>	60 penalty units

	to an EBA. The services in association to the making, approval, operation, variation or termination of the EBA.	
354	<p>Coverage by particular instruments</p> <p>A person must not discriminate against an employer because employees are covered or not covered by the NES, a workplace instrument, or an EBA.</p>	60 penalty units
355	<p>Coercion – allocation of duties to a particular person</p> <p>A person must not organise or take/threaten, any action against another person with intent to coerce the other person to employ, not employ a particular person or independent contractor. Likewise, such action cannot be taken to stop a particular person/independent contractor having particular duties or responsibilities.</p>	60 penalty units
357	<p>Misrepresenting employment as independent contracting arrangement</p> <p>The employer must not represent an individual as an independent contractor when they are an employee.</p>	60 penalty units
358	<p>Dismissing to engage as independent contractor</p> <p>An employer must not dismiss, or threaten to dismiss, an employee in order to engage an individual as an independent contractor to perform the same or substantially the same work under a contract for services.</p>	60 penalty units
359	<p>Misrepresentation to engage as independent contractor</p> <p>An employer must not make a statement that they know is false in order to persuade an individual to enter into an independent contractor arrangement.</p>	60 penalty units
369	<p>Dealing with a dismissal dispute by arbitration</p> <p>A person must not contravene an order under this section. The FWC may deal with the dispute by arbitration, including by making one or more of the following orders:</p> <ul style="list-style-type: none"> (a) an order for reinstatement of the person (b) an order for the payment of compensation to the person; (c) an order for payment of an amount to the person for remuneration lost; (d) an order to maintain the continuity of the person's employment; (e) an order to maintain the period of the person's continuous service with the employer. 	60 penalty units

378	<p>Contravening costs orders</p> <p>A person to whom an order for costs made under section 375B (cost orders against a party to a dispute) or 376 (cost orders against lawyers and paid agents) applies must not contravene a term of the order.</p>	60 penalty units
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Unfair Dismissal

Section	Civil remedy provision	Maximum penalty
405	<p>Contravening orders under this part</p> <p>Where an order in relation to Unfair Dismissal has been made, a term of the order must not be contravened.</p>	60 penalty units

Industrial action

Section	Civil remedy provision	Maximum penalty
417(1)	<p>Industrial action must not be organised or engaged in before nominal expiry date of enterprise agreement</p> <p>A person must not organise or engage in industrial action from the day on which:</p> <p>(a) an enterprise agreement is approved by the FWC until its nominal expiry date has passed; or</p> <p>(b) a workplace determination comes into operation until its nominal expiry date has passed;</p> <p>whether or not the industrial action relates to a matter dealt with in the agreement or determination.</p>	60 penalty units
421(1)	<p>Contravening an order</p> <p>An order relating to industrial action under the Fair Work Act 2009 must not be contravened</p>	60 penalty units
434	<p>Contravening a Ministerial direction</p> <p>A Minister may give directions in relation to a bargaining representative or employees for an Enterprise agreement and these directions must not be contravened.</p>	60 penalty units
458(2)	<p>Report about conduct of protected action ballot</p> <p>If a protected action ballot is not conducted by the Australian Electoral Commission and the independent advisor receives complaints about the conduct of the ballot or becomes aware of any irregularities in the</p>	30 penalty units

	conduct of the ballot, then a report must be prepared and given to the FWC.	
462	<p>Interferences etc. with protected action ballot</p> <p>A person must not interfere with a protected action ballot in any way.</p> <p>A person who is performing functions or exercising powers for the purposes of a protected action ballot must not show to another person, or permit another person to have access to, a ballot paper used in the ballot, except in the course of performing those functions or exercising those powers.</p>	30 penalty units
463	<p>Contravening a protected action ballot order etc.</p> <p>A person must not contravene:</p> <ul style="list-style-type: none"> - a term of a protected action ballot order OR - A term of an order made by the FWC in relation to a protected action ballot order <p>A person must not contravene a direction given by the FWC, or a protected action ballot agent, in relation to a protected action ballot order or a protected action ballot.</p>	60 penalty units

Protected industrial action

Section	Civil remedy provision	Maximum penalty
470	<p>Payments not to be made relating to certain periods of industrial action</p> <p>An employer does not pay an employee for the duration of their engagement in industrial action.</p>	60 penalty units
473	<p>Accepting or seeking payments relating to periods of industrial action</p> <p>An employee must not:</p> <ul style="list-style-type: none"> (a) accept a payment from an employer if the employer would contravene section 470 by making the payment; or (b) ask the employer to make such a payment. <p>An employee organisation, or an officer or member of an employee organisation, must not ask an employer to make a payment to an employee if the employer would contravene section 470 by making the payment.</p>	60 penalty units

Unprotected industrial action

Section	Civil remedy provision	Maximum penalty
474	<p>Payments not to be made relating to certain periods of industrial action</p> <p>If an employee engaged, or engages, in protected industrial action against an employer on a day, the employer must not make a payment to an employee in relation to the total duration of the industrial action on that day.</p>	60 penalty units
475	<p>Accepting or seeking payments relating to periods of industrial action</p> <p>An employee must not:</p> <p>(a) accept a payment from an employer if the employer would contravene section 474 by making the payment; or</p> <p>(b) ask the employer to make such a payment.</p> <p>An employee organisation, or an officer or member of an employee organisation, must not ask an employer to make a payment to an employee if the employer would contravene section 474 by making the payment.</p>	60 penalty units

Right of entry

Entry to investigate suspected contravention

Section	Civil remedy provision	Maximum penalty
482(3)	<p>Rights that may be exercised while on premises</p> <p>While on the premises, the permit holder may require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, any record or document (other than a non-member record or document) that is directly relevant to the suspected contravention and that:</p> <p>(i) is kept on the premises; or</p> <p>(ii) is accessible from a computer that is kept on the premises</p>	60 penalty units

Entry to investigate suspected contravention relating to Textile, Clothing, Footwear and Associated Industries Award workers

Section	Civil remedy provision	Maximum penalty
483B	<p>Rights that may be exercised while on premises</p> <p>While on the premises, the permit holder may require the occupier or an affected employer to allow the permit holder to inspect, and make copies of, any record or document that is directly relevant to the suspected contravention and that:</p> <ul style="list-style-type: none"> (i) is kept on the premises; or (ii) is accessible from a computer that is kept on the premises 	60 penalty units
483C	<p>Later access to record or document</p> <p>The permit holder may, by written notice, require the employer to produce or provide access to a record/document that is directly relevant to the suspected contravention on a later day specified in the notice.</p>	60 penalty units
483D	<p>Entry onto other premises to access records and documents</p> <p>While on the other premises, the permit holder may require the occupier to allow the permit holder to inspect, and make copies of, any such record or document.</p>	60 penalty units
483E	<p>Later access to record or document--other premises</p> <p>The permit holder may, by written notice, require the occupier of the other premises to produce, or provide access to, a record or document that is directly relevant to the suspected contravention</p>	60 penalty units

State or Territory OHS rights

Section	Civil remedy provision	Maximum penalty
494	Official must be permit holder to exercise State or Territory OHS right	60 penalty units
495	<p>Giving notice of entry</p> <p>A permit holder must not exercise a State or Territory OHS right to inspect or otherwise access an employee record of an employee, unless:</p> <ul style="list-style-type: none"> (a) he or she has given the occupier of the premises, and any affected employer, a written notice setting out 	60 penalty units

	<p>his or her intention to exercise the right, and reasons for doing so; and</p> <p>(b) the notice is given at least 24 hours before exercising the right.</p>	
496	<p>Contravening entry permit conditions</p> <p>In exercising a State or Territory OHS right, a permit holder must not contravene a condition imposed on his or her entry permit.</p>	60 penalty units
497	<p>Producing entry permit</p> <p>A permit holder must not exercise a State or Territory OHS right unless the permit holder produces an entry permit for inspection when requested by the occupier of the premises or an affected employer.</p>	60 penalty units
498	<p>When right may be exercised</p> <p>A permit holder may exercise a State or Territory OHS right only during working hours.</p>	60 penalty units
499	<p>Occupational health and safety requirements</p> <p>A permit holder must not exercise a State or Territory OHS right unless he or she complies with any reasonable request by the occupier of the premises to comply with an occupational health and safety requirement that applies to the premises.</p>	60 penalty units
500	<p>Permit holder must not hinder or obstruct</p> <p>A permit holder exercising, or seeking to exercise, rights in accordance with this Part must not intentionally hinder or obstruct any person, or otherwise act in an improper manner.</p>	60 penalty units
501	<p>Person must not refuse or delay entry</p> <p>A person must not refuse or unduly delay entry onto premises by a permit holder who is entitled to enter the premises in accordance with this Part.</p>	60 penalty units
502	<p>Person must not hinder or obstruct permit holder</p> <p>(1) A person must not intentionally hinder or obstruct a permit holder exercising rights in accordance with this Part.</p> <p>(2) To avoid doubt, a failure to agree on a place to inspect and make copies of a record or document (483(5)(b), 483C(6)(b) or 483E(6)(b)) does not constitute hindering or obstructing a permit holder.</p> <p>(3) Without limiting subsection (1), that subsection extends to hindering or obstructing that occurs after an entry notice is given but before a permit holder enters premises.</p>	60 penalty units

503	<p>Misrepresentations about things authorised by this Part</p> <p>(1) A person must not take action:</p> <ul style="list-style-type: none"> (a) with the intention of giving the impression; or (b) reckless as to whether the impression is given that the doing of a thing is authorised by this Part if it is not so authorised. 	60 penalty units
504	<p>Unauthorised use or disclosure of information or documents</p> <p>A person must not use or disclose information, or a document obtained under section 482, 483, 483B, 483C, 483D or 483E in the investigation of a suspected contravention for a purpose that is not related to the investigation or rectifying the suspected contravention, unless:</p> <ul style="list-style-type: none"> (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent: <ul style="list-style-type: none"> (i) a serious and imminent threat to an individual's life, health or safety; or (ii) a serious threat to public health or public safety; or (b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities; or (c) the use or disclosure is required or authorised by or under law; or (d) the person reasonably believes that the use or disclosure is reasonably necessary for one or more of the following by, or on behalf of, an enforcement body (within the meaning of the Privacy Act 1988): <ul style="list-style-type: none"> (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law; (ii) the enforcement of laws relating to the confiscation of the proceeds of crime; (iii) the protection of the public revenue; (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct; (v) the preparation for, or conduct of, proceedings before any court or tribunal, or 	60 penalty units

	<p>implementation of the orders of a court or tribunal; or</p> <p>(e) if the information is, or the document contains, personal information (within the meaning of the Privacy Act 1988)--the use or disclosure is made with the consent of the individual to whom the information relates.</p>	
506	<p>Contravening order made to deal with dispute</p> <p>A person must not contravene a term of an order under subsection 505(2) or subsection 505A(3).</p>	60 penalty units
509	<p>Contravening order made for misuse of rights</p> <p>A person must not contravene a term of an order under subsection 508(1).</p>	60 penalty units
521C	<p>Accommodation arrangements for remote areas</p> <p>Applies where accommodation is not reasonably available to the permit holder.</p> <p>If an accommodation agreement is entered into under this section, then the occupier must not charge an organisation or permit holder a fee that is more than is necessary to cover the cost to the occupier of providing the accommodation.</p>	60 penalty units
521D	<p>Transport arrangements for remote areas</p> <p>Applies where premises are located in a place that is not reasonable accessible to the permit holder. If a transport agreement is entered into under this section, then the occupier must not charge an organisation or permit holder a fee that is more than is necessary to cover the cost to the occupier of providing the transport</p>	60 penalty units
517	<p>Return of entry permits to the FWC</p> <p>A permit holder must return an entry permit to the FWC within 7 days of any of the following things happening:</p> <ul style="list-style-type: none"> (a) the permit is revoked or suspended (b) conditions are imposed on the permit after it is issued (c) the permit expires 	60 penalty units

Stand down

Section	Civil remedy provision	Maximum penalty
527	A person must not contravene a term of an FWC order dealing with a dispute about the operation of this Part.	60 penalty units

Other rights and responsibilities

Section	Civil remedy provision	Maximum penalty
530	<p>Employer to notify Centrelink of certain proposed dismissals</p> <p>An employer must not terminate an employee's employment for reasons of economic, technological, structural or similar nature, or for reasons including such reasons, unless the employer has complied with the notification of Centrelink requirements.</p>	30 penalty units
535	<p>Employer obligations in relation to employee records</p> <p>An employer must make, and keep for 7 years, employee records of the kind prescribed by the regulations in relation to each of its employees. The records must:</p> <p>(a) if a form is prescribed by the regulations--be in that form; and</p> <p>(b) include any information prescribed by the regulations.</p> <p>An employer must not make or keep a record for the purposes of this section that the employer knows is false or misleading.</p>	<p>Serious contravention (600 penalty units)</p> <p>Otherwise – Otherwise (60 penalty units)</p>
536	<p>Employer obligations in relation to pay slips</p> <p>An employer must give a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work.</p> <p>The pay slip must:</p> <p>(a) if a form is prescribed by the regulations--be in that form; and</p> <p>(b) include any information prescribed by the regulations.</p> <p>An employer must not give a pay slip for the purposes of this section that the employer knows is false or misleading.</p>	<p>Serious contravention (600 penalty units)</p> <p>Otherwise (60 penalty units)</p>

The Fair Work Commission

Section	Civil remedy provision	Maximum penalty
611(3)	Costs A person to whom an order for costs applies must not contravene a term of the order	60 penalty units

Office of the Fair Work Ombudsman

Section	Civil remedy provision	Maximum penalty
707A	Hindering or obstructing the Fair Work Ombudsman and inspectors etc. (1) A person must not intentionally hinder or obstruct: <ul style="list-style-type: none"> (a) the FWO or an inspector in the performance of their functions or the exercise of his or her powers as the FWO 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. 	60 penalty units
711	Power to ask for person's name and address (1) An inspector may require a person to tell the inspector the person's name and address if the inspector reasonably believes that the person has contravened a civil remedy provision. (2) If the inspector reasonably believes that the name or address is false, the inspector may require the person to give evidence of its correctness.	30 penalty units
712	Power to require persons to produce records or documents A person who is served with a notice to produce must not fail to comply with the notice.	60 penalty units
712B	Requirement to comply with FWO notice A person who has been given an FWO notice must do the following (as applicable): <ul style="list-style-type: none"> (a) give information or produce a document in accordance with the notice; 	600 penalty units

	<p>(b) attend to answer questions in accordance with the notice</p> <p>(c) take an oath or make an affirmation when required to do so</p> <p>(d) answer questions relevant to the investigation while attending as required by the FWO notice.</p>	
716	<p>Compliance notices</p> <p>A person must give notice in accordance with this section. Notice must be given if an inspector reasonably believes that a person has contravened one or more of the following:</p> <p>(a) a provision of the National Employment Standards;</p> <p>(b) a term of a modern award;</p> <p>(c) a term of an enterprise agreement;</p> <p>(d) a term of a workplace determination</p> <p>(e) a term of a national minimum wage order;</p> <p>(f) a term of an equal remuneration order.</p>	30 penalty units
718A (1)	<p>False or misleading information or documents</p> <p>A person must not give information or produce a document to the Fair Work Ombudsman, an inspector etc. exercising powers or performing functions under Commonwealth law, if the person knows, or is reckless as to whether, the information or the document:</p> <p>(a) is false or misleading; or</p> <p>(b) for information--omits any matter or thing without which the information is misleading.</p>	60 penalty units

Extension of National Employment Standards entitlements

Section	Civil remedy provision	Maximum penalty
745	<p>Contravening the extended parental leave provisions</p> <p>A non-national system employer must not contravene the extended parental leave provisions.</p>	60 penalty units
760	<p>Contravening the extended notice of termination provisions</p> <p>A non-national system employer must not contravene the extended notice of termination provisions.</p>	60 penalty units

Transfer of business from a State public sector employer

Section	Civil remedy provision	Maximum penalty
768AG	<p>Contravening a copied State instrument</p> <p>A person must not contravene a term of a copied State instrument for a transferring employee that applies to the person.</p>	60 penalty units
768BT	<p>Contravening a take-home pay order</p> <p>A person must not contravene a term of a take-home pay order that applies to the person.</p>	60 penalty units

Additional provisions relating to termination of employment

Section	Civil remedy provision	Maximum penalty
772	<p>Employment not to be terminated on certain grounds</p> <p>An employer must not terminate an employee's employment for or including one or more of the following reasons:</p> <ul style="list-style-type: none"> (a) temporary absence from work because of illness or injury of a kind prescribed by the regulations (b) trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours (c) non-membership of a trade union (d) seeking office as, or acting or having acted in the capacity of, a representative of employees (e) the filing of a complaint, or the participation in proceedings, against an employer (f) race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer responsibilities, pregnancy, religion, political opinion, national extraction or social origin (g) absence from work during maternity leave or other parental leave (h) temporary absence from work for the purpose of engaging in a voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances 	60 penalty units
777	<p>Dealing with a dispute by arbitration</p> <p>The FWC may deal with the dispute by arbitration, including by making one or more of the following orders:</p>	60 penalty units

	<p>(a) an order for reinstatement of the employee</p> <p>(b) an order for the payment of compensation to the employee</p> <p>(c) an order for payment of an amount to the employee for remuneration lost</p> <p>(d) an order to maintain the continuity of the employee's employment</p> <p>(e) an order to maintain the period of the employee's continuous service with the employer.</p> <p>A person to whom an order applies must not contravene a term of the order.</p>	
782	<p>Contravening costs orders</p> <p>A person to whom an order for costs made under section 779A or 780 applies must not contravene a term of the order.</p>	60 penalty units
785(4)	<p>Employer to notify Centrelink of certain proposed terminations</p> <p>An employer must not terminate an employee's employment for reasons of economic, technological, structural or similar nature, or for reasons including such reasons, unless the employer has complied with the notification of Centrelink requirements</p>	30 penalty units

Workers bullied at work

Section	Civil remedy provision	Maximum penalty
789FG	<p>Contravening an order to stop bullying</p> <p>A person to whom an order to stop bullying applies, must not contravene a term of the order.</p>	60 penalty units

Time limit on applications

FAIR WORK ACT 2009 - SECT 544

Time limit on applications

A person may apply for an order under this Division in relation to a contravention of one of the following only if the application is made within 6 years after the day on which the contravention occurred:

- (a) a civil remedy provision;
- (b) a safety net contractual entitlement;
- (c) an entitlement arising under subsection 542(1).

Note 1: This section does not apply in relation to general protections court applications or unlawful termination court applications (see subparagraphs 370(a)(ii) and 778(a)(ii)).

Note 2: For time limits on orders relating to underpayments, see subsection 545(5)

How much is the penalty?

The relevant court can make an order for a penalty where a civil remedy provision has been contravened. The amount of the order will depend on whether the party is an individual or body corporate.

For an individual the maximum penalty is the maximum number of penalty units indicated in the previous tables.

For a body corporate the maximum penalty is five times the maximum number of penalty units indicated in the previous tables.

This factsheet is a guide only. Please contact the Workplace Relations Advice Line (03 8662 5222) for further information.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues. Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on (03) 8662 5222.

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