

June 2017

*Practice Group:**Labour, Employment
and Workplace Safety*

July 1...Here We come!

By Christa Lenard and Meg Aitken

What Rhymes with 1 July?

Not 'employment contract audit', but maybe it should. 1 July is the date when a number of employment related thresholds are indexed which may affect employers' compliance with workplace laws in the 2017/18 financial year.

Set out below are the key changes that employers should be aware of. We have also included a printable and easy to follow [checklist](#) to assist in reviewing your workplace arrangements and a [key threshold table](#) to print out and keep close by.

High Income Threshold and Maximum Compensation for Unfair Dismissal (UFD)

2016/2017 Financial Year	2017/2018 Financial Year
AUD138,900 per annum	AUD142,000 per annum

As of 1 July 2017, the high income threshold will increase to AUD142,000 per annum.

In order to have access to the unfair dismissal jurisdiction, an employee must either be covered by an award or enterprise agreement or earning less than the high income threshold.

This means that from 1 July 2017, where a dismissal is found to be unfair:

- employees earning AUD142,000 or more who are not covered by an award or enterprise agreement will not be eligible to bring an unfair dismissal claim
- the maximum financial compensation that can be awarded will be AUD71,000 (equivalent to 6 months' salary calculated at the high income threshold)

Employers should take care when calculating whether their employees are earning above or below the high income threshold by considering the following table.

An employee's earnings include	An employee's earnings do not include
<ul style="list-style-type: none"> ✓ Wages 	<ul style="list-style-type: none"> × Amounts that are unable to be determined in advance, eg: <ul style="list-style-type: none"> ○ commissions and incentive-based payments and bonuses ○ overtime (unless the overtime is guaranteed).

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<ul style="list-style-type: none"> ✓ Amounts applied or dealt with on the employee's behalf or as the employee directs, eg: <ul style="list-style-type: none"> ○ additional superannuation contributions paid in excess of the compulsory amount ○ salary sacrificed amounts 	<ul style="list-style-type: none"> ✗ Compulsory superannuation contributions
<ul style="list-style-type: none"> ✓ The agreed money value of non-monetary benefits*, eg: <ul style="list-style-type: none"> ○ mobile phone ○ fuel allowance ○ motor vehicle <p>*Apportioned with the amount attributed to personal use being included as earnings and the business use component excluded.¹</p>	<ul style="list-style-type: none"> ✗ Reimbursements

National Minimum Wage (Before Statutory Superannuation)

2016/2017 Financial Year	2017/2018 Financial Year
AUD672.70 per week	AUD694.90 per week
AUD17.70 per hour	AUD18.29 per hour

The national minimum wage and modern award minimum wage will increase by 3.3% on 1 July 2017 to AUD18.29 per hour or AUD694.90 per week based on a 38 hour week.

The increase will apply from the first full pay cycle starting on or after 1 July 2017 and is equal to an increase of AUD22.20 per week or 59 cents per hour.

Annual Superannuation Guarantee Contribution

2016/2017 Financial Year	2017/2018 Financial Year
9.50%	9.50%
Maximum contribution base of AUD206,480 per annum or AUD51,620 per quarter	Maximum contribution base of AUD211,040 per annum or AUD52,760 per quarter

The superannuation guarantee contribution rate remains at 9.5% for the 2017/2018 financial year and is not scheduled to increase until 2021. The maximum contribution base will however increase to AUD211,040 per annum. This means, in the absence of a contractual agreement to the contrary, employers are not required to make superannuation contributions to employees for amounts earned over AUD211,040 per annum from 1 July onwards.

¹ *Andrew Matthews v Redflex Traffic Systems Pty Ltd* [2017] FWC 353.

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Tax Free Genuine Redundancy Payment and Early Retirement Scheme Limits

2016/2017 Financial Year	2017/2018 Financial Year
AUD9,936 base	AUD10,155 base
AUD4,969 per year of service	AUD5,078 per completed year of service

Employees are entitled to a tax free payment up to a set limit for genuine redundancies and early retirement schemes. The tax free limit is calculated based on the employee's years of service.

From 1 July 2017, the first AUD10,155 plus AUD5,078 for each year of service will not attract any tax. Any amounts in addition to the tax-free limit should be taxed as an employment termination payment at the increased concessional tax rate of 32.5% from 1 July 2017.

Taxation rate of Employment Termination Payments (ETP) Payments

2016/2017 Financial Year	2017/2018 Financial Year
32%	32.5%

Maximum FW Act Penalties for Corporations (300 penalty units)

2016/2017 Penalty maximum	2017/2018 Penalty maximum
300 penalty units (AUD54,000)	300 penalty units (AUD54,000)

The maximum penalty for a breach of the *Fair Work Act 2009 (Cth)* is currently 300 penalty units or AUD54,000 for a corporation. Penalty units are automatically adjusted in line with inflation every three years under the *Crimes Act 1914 (Cth)* and the next scheduled penalty unit increase is not scheduled to take effect until 2018.

However, employers should be aware of the recent amendments proposed under the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (Bill)* to introduce new civil penalty provisions for 'serious contraventions' of the *Fair Work Act 2009 (Cth)*.

If the Bill is passed, the new provisions will attract maximum penalties that are ten times higher than the 2016/17 maximum penalties. The Bill also proposes a substantial increase in the penalties for strict liability contraventions relating to record keeping and false or misleading employee records or payslips. We will keep you updated as the Bill progresses.

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1 July Employment Agreement Audit

Employers should consider reviewing the current employment agreements in place at their organisation to ensure that they remain compliant with both statutory and contractual obligations in the 2017/18 financial year.

We have prepared an easy to follow checklist to assist with your review which can be [accessed here](#).

If as a result of your audit, you identify outdated or inaccurate clauses, the employment agreement will require updating.

Employers should consider whether a written variation will be sufficient to remedy the situation or whether a new employment contract would be more appropriate. The time at which an employee is being offered a pay increase is an opportune time to provide an updated contract or written variation.

Can we help?

Finally, if you have any questions about the effect of the 1 July 2017 threshold increases or any of your employment arrangements, please do not hesitate to contact our Labour, Employment and Workplace Safety team.

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