



# Termination Payments to Executives

Date : February 7, 2013

## Background

The aim of the amendments to the *Corporations Act* was to curb excessive termination benefits paid to company executives and improve accountability to shareholders.

## Key Features

- termination benefits exceeding one year of the base salary for any person in a publicly listed company or the office holder in a private company who holds a 'managerial or executive office' (including Directors and employees whose details were included in the previous years' directors report) require shareholder approval
- limited exceptions apply, including: benefits given under order of a court, a genuine superannuation contribution paid by an employee or employer and accrued benefits that are payable under law (such as annual leave, long service leave and sick leave)
- 'base salary' is interpreted broadly. Essentially, it amounts to the average annual base salary paid over the most recent three years, including cash salary, fees and non-monetary benefits. Specific rules apply where the person has been employed for less than three years
- the notice of a general meeting to consider executive termination benefits exceeding the threshold must be accompanied by details of the proposed payment
- an executive must not vote on a shareholder resolution that will confer on them a termination benefit in excess of the threshold
- all benefits received by an executive in excess of the threshold without shareholder approval must promptly be paid back

## Maximum Penalties

Individuals and companies face potential maximum fines for non-compliance, amounting to:

- \$19,800 for individuals and/or imprisonment for up to 6 months
- \$99,000 for corporations

## Tips for Employers

Companies considering a restructure of their senior management or taking any steps in connection with recruitment, retention or retirement of executives should:

- review termination provisions in employment contracts and any applicable redundancy



policies / procedures to ensure compliance

- determine whether shareholder approval is required prior to paying any benefits on termination of employment for any reason
- seek advice from an employment lawyer in order to ensure they are compliant with workplace law

## More Information

If you have concerns about how the amendments to the *Corporations Act* will affect your workplace, it is best to seek proper employment law advice. A workplace lawyer or employment relations expert can provide practical employment advice that ensures your procedures are consistent with the current workplace law.

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** team on **9635-7966** to speak with one of our employment lawyers about your employment law issues.