

## **Appendix 3**

### **Review of the Fair Work Ombudsman and the penalty regime under the *Fair Work Act 2009***

#### **Objectives**

The Review is charged with examining and making recommendations on the adequacy of the resources of the Fair Work Ombudsman, the appropriateness of the powers of the Fair Work Ombudsman, the appropriateness of the penalty provisions under the *Fair Work Act 2009*, the utility of the accessory liability provisions under the *Fair Work Act 2009*, and the utility of the sham contracting provisions under the *Fair Work Act 2009*.

#### **Terms of reference**

1. The Review will examine the:
  - a. adequacy of the resources of the Fair Work Ombudsman with respect to fulfilling its role under the *Fair Work Act 2009*;
  - b. appropriateness of the powers of the Fair Work Ombudsman, including with reference to its ability to make full use of the accessory liability provisions in the *Fair Work Act 2009*;
  - c. appropriateness of the penalty provisions under the *Fair Work Act 2009*, including with reference to the ability of a company to avoid a portion of court-imposed penalties by measures such as liquidating the company;
  - d. utility of the accessory liability provisions, including with reference to the ability of the Fair Work Ombudsman to:
    - i. pursue a lead firm or head franchisor for accessory liability; and
    - ii. directly recover underpayments against an accessory (as well as seeking penalties);
  - e. sham contracting provisions to the extent that they can be readily circumvented by certain types of third party contracting arrangements;
  - f. any related matter
2. The Review will report to the Minister for Employment by 30 October 2016.

#### **Resourcing**

1. The Government to appoint, by 30 June 2016, an independent tripartite panel to conduct the Review.
2. The Department of Employment to provide the secretariat for the Review.

#### **Tabling in Parliament**

1. The review is to be tabled in both Houses of Parliament by 30 November 2016.