

P.o.P (POWER OF PRINT) SUMMIT '25
SHARE THE KNOWLEDGE

CLASS NOTES

Ill and Injured Employees





HR/IR

Ill and Injured Employees: Your Obligations and Rights



Charles Watson

Visual Media Association, GM - IR, Policy & Governance

Charles has a strong background in workplace relations and corporate governance.

Having worked in some of Australia's pre-eminent law firms and industry bodies for over 20 years, he has a depth of knowledge and experience across a range of industries. His qualifications include a Bachelor of Laws, post-graduate studies in Industrial Relations Law, and is a Fellow of the Governance Institute of Australia.

Additionally, Charles is also a regular contributor to trade press and other media for his commentary, editorial and insight on workplace relations, government and legislative amendment matters.

“Employers must follow due process, document all actions, and comply with legal obligations to minimise risks.”

Charles Watson

Managing ill and injured employees presents a significant challenge for employers. Businesses must balance their legal obligations, business needs, and duty of care while mitigating risks associated with unfair dismissal claims, discrimination complaints, and workers' compensation obligations.

These class notes provide a comprehensive summary to handling ill and injured employees, covering:

- The legal framework governing these matters
- Employer obligations under Fair Work and other legislation
- The role of medical assessments in determining an employee's fitness for work
- Risks and potential exposures
- Best practices for compliance and risk mitigation

LEGAL FRAMEWORK AND EMPLOYER OBLIGATIONS

Various state and federal laws apply when managing an ill or injured employee. Employers must navigate multiple legislative requirements that may overlap.

Key laws include:

Fair Work Act 2009:

Protects employees from dismissal due to a temporary absence caused by illness or injury for up to three months in a 12-month period.

Workers' Compensation Laws:

Each state has different rules; for example, in NSW, employers cannot terminate an injured worker within six months of a workplace injury.

Disability Discrimination Act:

Employers must not discriminate against employees based on illness or injury. Before considering termination, they must explore reasonable adjustments to accommodate the employee.

Termination must be justified and supported by medical evidence to avoid legal repercussions.

MEDICAL ASSESSMENTS AND JUSTIFICATION FOR TERMINATION

Before taking any action, employers must assess an employee's capacity for work using medical evidence.

Steps include:



Obtaining medical reports from the employee's treating doctor.



Requesting an Independent Medical Examination (IME) if conflicting medical advice exists or further clarity is needed.



Providing a clear job description to medical practitioners to ensure assessments are accurate.



Determining reasonable adjustments, such as modifying duties, hours, or work location, if feasible.



If medical evidence confirms that an employee cannot perform their role, even with reasonable adjustments, termination may be considered—but only after following a fair and consultative process.

Employers should prioritise medical evidence and reasonable adjustments before making termination decisions.

RISKS AND POTENTIAL EXPOSURES

Improperly handling an ill or injured employee can expose a business to significant risks:

1

Unfair Dismissal Claims

- Terminating an employee without following due process may result in a claim before the Fair Work Commission.
- Employers must have a valid reason and follow procedural fairness.

2

Adverse Action Claims

- If an employee believes they were dismissed due to their illness or injury, they can lodge an adverse action claim, which has no compensation cap.

3

Workers' Compensation Breaches

- Failure to comply with return-to-work obligations could lead to fines and penalties from state regulators.

4

Privacy and Confidentiality Violations

- Mishandling private medical information can lead to breaches of Australian privacy laws.

“A well-structured approach ensures fairness, compliance, and reduced legal risk.”

GOOD PRACTICES FOR MANAGING ILL AND INJURED EMPLOYEES

To ensure compliance and reduce risks, employers should:

Maintain thorough records:

- > Document medical reports, communication with employees, and adjustments made.

Follow a consultative process:

- > Engage in open discussions with employees about their condition and return-to-work options.

Explore reasonable adjustments:

- > If feasible, modify duties, hours, or work arrangements to accommodate the employee.

Understand legislative requirements:

- > Be aware of state-specific laws that impact termination decisions.

Seek professional advice:

- > When in doubt, consult legal or HR professionals to ensure compliance.



Q: What are reasonable adjustments?

A: Reasonable adjustments are modest, well-communicated changes that help an employee continue working. They can include altered duties, flexible hours, workplace modifications, or technological assistance. Employers should periodically review adjustments to ensure they remain effective.

Q: What if an employee's doctor clears them for work, but the employer has concerns?

A: Employers should request a functional assessment against job duties. If necessary, they can require an IME for a second opinion, but they must obtain employee consent or have a valid reason for the request.

Are you looking for HR assistance?

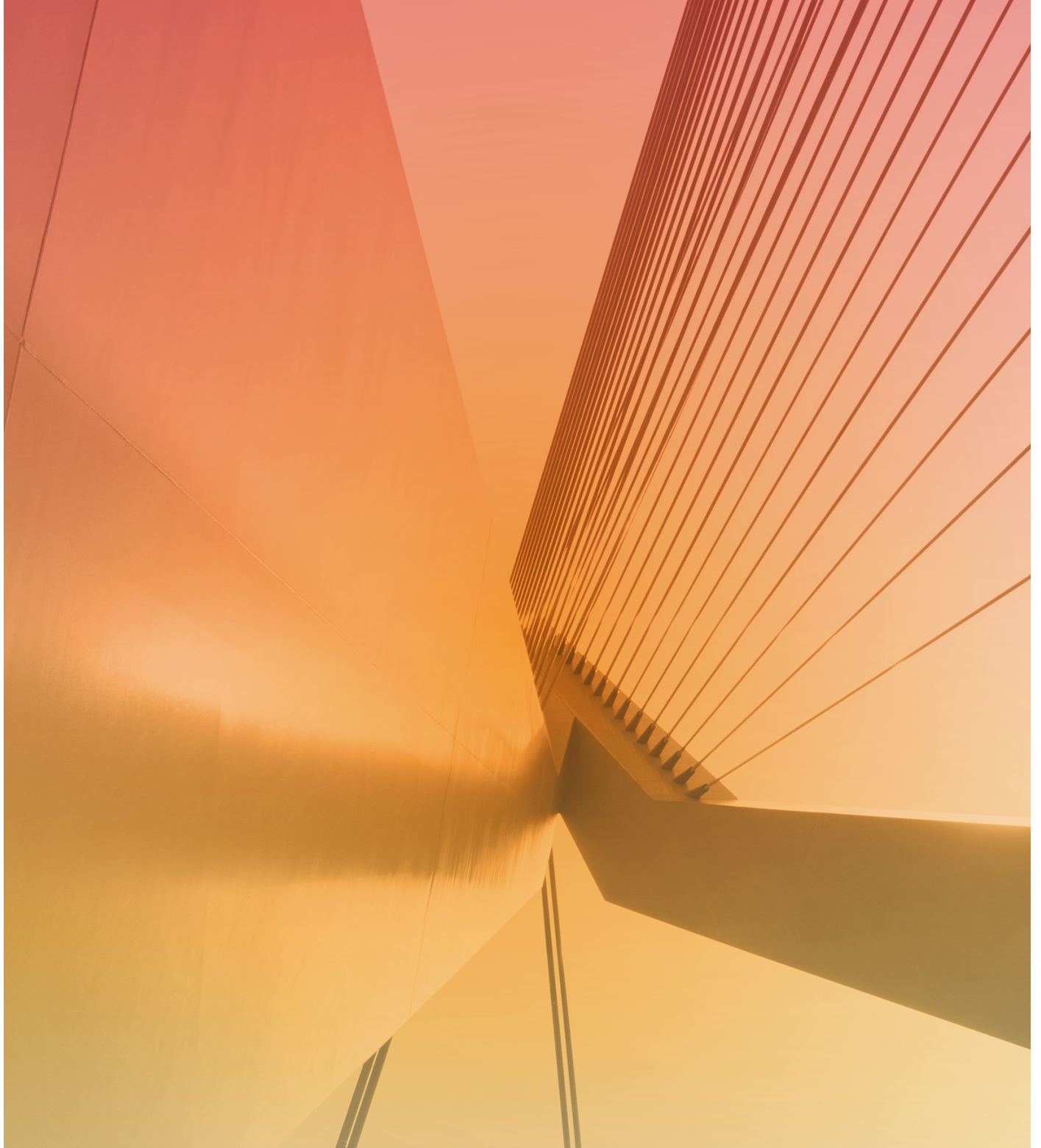
Visual Media Association members have access to the online HR/IR Advisory Service and Member Advisory hotline:

1800 835 167
+61 3 9421 2206

hello@visualmediaassociation.org.au
visualmediaassociation.org.au

NOTES





Visual
Media
Association

+61 3 9421 2206

hello@visualmediaassociation.org.au

visualmediaassociation.org.au

Unit 3, 5-7 Compark Circuit
Mulgrave VIC 3170

RICOH
imagine. change.

media 
super