

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

In this week's bulletin we look at the upcoming amendments to the Federal Government's paid parental leave scheme, changes in NSW relating to the ANZAC Day public holiday, the recently revised workplace delegates right clause in the GAPP, the wage price index for December 2025, unemployment rates for January 2026, and a recent decision of interest relating to the Commissions powers to revise proposed enterprise agreements.

FEDERAL GOVERNMENT PAID PARENTAL LEAVE – 1 JULY 2026

The government scheme is increasing the period of paid leave from 24 weeks to 26 weeks from 1 July 2026. Members should review and consider their parental leave policies and processes so as to determine if any changes will be required as a result of these upcoming changes.

NSW ANZAC DAY ADDITIONAL PUBLIC HOLIDAY 2026 and 2027

Under the NSW *Public Holidays Act 2010*, Anzac Day is fixed to 25 April each year regardless of the day on which it falls. However, the NSW Government has announced an additional public holiday on the Monday following Anzac Day this year (Saturday 25 April 2026) and next year (Sunday 25 April 2027).

Premier Minns has stated this additional public holiday would be on a trial basis for 2026 and 2027. It will then be reviewed by the NSW Government in 2032 which is when ANZAC Day would next fall on a weekend. Prior to this announcement of the additional Anzac Day public holiday, NSW had 11 public holidays in 2026, compared with 15 in South Australia and the Northern Territory and 14 in Queensland, Victoria and the Australian Capital Territory and on par with Tasmania's 11 public holidays this year.

What does this mean for members?

Members with operations or employees based in NSW will be required to permit their employees to observe the additional public holiday. Alternatively, if you reasonably require an employee to work on Monday 27 April 2026, those employees will be entitled to be paid at public holiday penalty rates of pay. Alternatively, you may seek to reach an agreement with the employee to substitute another day to be taken in lieu.

REVISED WORKPLACE DELEGATES RIGHTS AWARD CLAUSE

The Graphic Arts, Printing and Publishing Award has recently had the workplace delegates right clause amended as a result of a Federal Court decision late last year. In this item we look to unpack it for members.

Background

- Back in 2022 one of the Federal Governments 'Closing the Loopholes' Bills amended the *Fair Work Act 2009* and required that modern Awards must include a delegates' rights term for workplace delegates covered by the Award.
- The Fair Work Commission made determinations and amended all Awards in June 2024 (including the Graphic Arts, Printing and Publishing Award).

IR POLICY AND GOVERNANCE UPDATE



- Late last year, and on an action taken by the CFMEU, the Federal Court examined those amendments and, on 17 December 2025, handed down its decision to quash those terms inserted by the Commission in 9 particular Awards (Construction and Mining related), as it held the Full Bench of the Commission had gone beyond its legislative powers in 3 respects:
 - The Commissions scope of the original workplace delegate clause was too confined, compared to the wording of the Fair Work Act.
 - The Commission had confined the rights of delegates to communicate 'for the purpose of representing' the industrial interests rather than the wider 'in relation to' those industrial interests as drafted in the *Fair Work Act*.
 - The wording of the clauses limited the scope of the delegates' rights because those rights were subject to an obligation to comply with their duties and obligations as an employee, and were not to hinder, obstruct, or prevent the normal performance of work, regardless of whether doing so was in the course of the reasonable exercise of the delegates' rights provided by the clause. By contrast the Federal Court held that a delegate is *not* required to comply with their duties and obligations as an employee, and *can* hinder, obstruct, or prevent the normal performance of work, if they are doing so in the reasonable exercise of their delegates' rights.
- The effect of the Full Court decision was that those 9 awards were found to not have a valid delegates' rights clause, and the clauses contained in the remaining 140+ modern Awards may not be valid.
- As a result, on 23 January this year, the Fair Work Commission amended all Awards to include a valid delegates rights term, and backdated to have effect from 1 July 2024 in light of the exceptional circumstances.

Effects on our industry

Although our industry continues to have a union presence, it is unlikely these recent Award amendments will significantly affect most members compared to industries with more significant industrial disputation and enterprise agreement coverage. Nonetheless, the full effects of these revised workplace delegates rights clauses within all Awards are yet to be seen. Therefore, members should consider the following:

1. Employers are required to act in a manner consistent with workplace delegates rights as per section 350A of the Fair Work Act and the 'revised clause' (retrospectively) within a relevant Award (please refer to clause 36A of the Graphic Arts, Printing and Publishing Award).
2. The amendments may affect those members who have a workplace delegate and who feels somewhat more empowered or emboldened by these recent Award revisions and seek to 'flex' any perceived right.
3. Technically, if workplace delegates are reasonably exercising their rights, they are not bound by their ordinary duties and obligations as an employee and may hinder or obstruct the performance of work. The definition of 'reasonably' is yet to have crystallised parameters placed on it by the Commission.

IR POLICY AND GOVERNANCE UPDATE



4. Depending on the drafting of an enterprise agreement made since July 2024 incorporating an Awards 'old' delegates right clause, may need to consider the 'revised' Award clause will be incorporated.
5. Further, it is likely the Commission will apply greater scrutiny on delegates rights clauses within any enterprise agreement during the approval process.
6. The scope of a delegate's rights extends to workers in the same workplace even if those workers are not employed by the same employer. This could potentially include sub-contractors and labour hire workers.

WAGE PRICE INDEX

Last week the ABS notified the Wage Price Index in the quarter ending December 2025 increased by 0.8%, and 3.4% for the year. Further, it revealed:

- public sector wage growth was up by 4% per cent in the year to December 2025, which is higher than it was at the same time the previous year (2.8%).
- private sector wages increased 3.4% in the same period, also a higher figure than the same time the previous year (3.3%).

JANUARY UNEMPLOYMENT FIGURES

In further data from the ABS, Australia's unemployment rate remained at 4.1% in January 2026. The latest data also revealed that:

- The seasonally adjusted number of unemployed people declined to 624,700 in January 2026, down from 626,600 in December.
- Employed people grew by 18,000. Full-time employment rose by 50,000 people, partly offset by a fall of 33,000 people in part-time employment.

FAIR WORK COMMISSION ENTERPRISE AGREEMENT POWERS

The effects of amendments to the Fair Work Act may only become obvious in practice when the Commission and Federal Court consider them in matters before them. This was recently evident in a recent decision of the Commission relating to the making of the ALDI Enterprise Agreement. In January this year, the Commission exercised its use of powers under section 191A of the Act to amend the drafting of a proposed enterprise agreement prior to approving it.

Although upon reading the section it is not obvious, section 191A, inserted into the Act in 2022, allows the Commission to approve an agreement, with an amendment specified by the Commission, if the Commission is concerned that the proposed agreement does not meet the better off overall test and the amendment is necessary to address the concern.

Deputy President Slevin raised a concern that the proposed ALDI agreements did not meet the BOOT for part-time warehouse employees, compared to the relevant Award, due to the uncertainty associated with the employment arrangements for those employees. The amendment proposed by the Commission to address the concern included that ALDI was to reach agreement with each of its part-time employees on a regular pattern of work, specifying at least, the hours worked each day,

IR POLICY AND GOVERNANCE UPDATE



which days of the week the employee will work, and the actual starting and finishing times each day and to record that agreement in writing.

The employer did not agree to the amendments sought by the Commission arguing that any detrimental aspects of the agreements were compensated for by the higher rate of pay, and that the proposed amendment was a fundamental change to the agreement. The Commission nevertheless determined to make the amendments. ALDI has lodged an appeal to this decision pursuant to s 604 of the FW Act. Although under appeal, this matter evidences the Commission may 'flex' to intervene directly where it believes an enterprise agreement does not meet statutory protections, even where rates of pay are higher than Award minimums.

Given this power to override, members with enterprise agreements coming up for renewal will need to:

- Carefully consider how agreement terms will be assessed under the BOOT.
- Focus on how those terms operate and not merely on the rates of pay being offered.
- Understand the Commission may intervene in bargaining outcomes and make revisions prior to approving an agreement.

CONTACT

Any Industrial Relations Member who has a related query should contact the HR Hotline on 1800 003 862 or contact Charles Watson, GM – IR, Policy and Governance via email: charles@visualmediaassociation.org.au

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