

# IR POLICY AND GOVERNANCE UPDATE



## INTRODUCTION

This week we look at when the next federal election is likely to be held, in light of Cyclone Alfred and its potential impacts in Queensland and NSW we look at related employment issues if your business is impacted, and the amendments to the casual employee conversion process that are now in place.

## FEDERAL ELECTION DATE?

Federal election campaigning has been underway since the start of 2025, although the actual date of the election remains to be called. Perhaps by the time you read this the federal election will have been called. If not, a look into the crystal ball makes it likely to be called on for Saturday 12<sup>th</sup> April 2025. The reasons being is that the following weekend after the 12<sup>th</sup> is Easter (won't happen), the WA state election is on Saturday 8<sup>th</sup> March and some distance will be needed from that for a variety of reasons.

Further, the current government needs at least 33 days after getting permission from the Governor General to hold the election, from which point the government will enter caretaker mode. It will also allow the current government to avoid having to announce the Budget which is pencilled in for 25 March...unless the figures are highly supportive of the current government.

## CYCLONE ALFRED – EMPLOYER AND EMPLOYEE ISSUES

We desperately hope your businesses and employees are not affected, but with the forecasted impact of Cyclone Alfred likely to hit south-east Queensland and northern NSW in the coming days, businesses may face temporary closures or operational disruptions. Members should understand their rights and obligations when considering standing down employees pursuant to s.524 of the *Fair Work Act 2009* (the "Act"), and related factors.

Effectively, under the Act an employer may stand down employees without pay if they cannot be usefully employed due to:

- A natural disaster (e.g., severe weather conditions preventing operations),
- A work stoppage beyond the employer's control (e.g., damage to premises or loss of power),  
or
- An enforceable government direction requiring the business to close.

Members cannot stand employees down simply due to reduced business activity or lack of work. If a modern Award, enterprise agreement, or contract contains stand down provisions, those rules may apply instead of the Act as far as there is scope.

## Before Standing Down Employees: Employer Checklist

Before committing to a stand down, employers are required to explore all options. These include:

- **Working from Home** – If feasible, employees may work remotely instead of being stood down.
- **Changes to Duties, Hours, or Rosters** – Employers and employees may **mutually agree** to adjust work arrangements to keep employees engaged. Some awards or agreements may require consultation before changes are made.
- **Accessing Paid or Unpaid Leave** – Employers and employees can agree to:
  - Take **accrued annual leave** or **long service leave**,

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- Use **paid leave** under an applicable award, enterprise agreement, or contract, or
- Take **unpaid leave** if paid leave is not available.

## Other Key Considerations

### Stand Down and Continuous Service:

- Although an employee is not paid their ordinary wages during a stand down, it does not break an employee's continuous service.
- The stand down period still counts as service when calculating entitlements like notice, redundancy, and leave accrual.

### Leave Accrual During Stand Down:

- Employees continue to accrue annual and personal leave while stood down.
- Employees cannot use paid sick, carer's, or compassionate leave during the stand down period.

### Public Holiday Entitlements:

- If a public holiday falls during a stand down, employees must be paid if they would have otherwise ordinarily worked that day.

### Safety of Employees:

- Consider any potential risks your employees may face. Flooded roads, loss of power and similar could impact an employee getting to work.

## Advice for Members

Affected members are encouraged to do the following when facing the possibility of a stand down:

- Communicate with employees about the potential for stand downs and their entitlements.
- Consider alternative arrangements, such as remote work or using paid leave where applicable.
- If a stand down does occur, confirm the details in writing and include:
  - The reason for the stand down, and that it is in accordance with s.524 of the Act.
  - The commencement and forecast end date of a stand down.
  - The option for an employee to access accrued annual or long service leave for the period.
- Maintain clear records of any stand down decisions and related discussions.

## CHANGES TO CASUAL EMPLOYEE CONVERSION

From 26 February 2025, casual employee conversion will operate under an "employee choice pathway", which wholly replaces the current regime, dispensing with the need for an employer to instigate conversion to permanent employment status. Previously, employers had an obligation to offer conversion from casual to permanent employment after 6 or 12 months of service where certain criteria are met.

Under the new 'Employee Choice Pathway' a casual employee can give written notice (the "notification") to their employer to convert to permanent employment if they have:

- been employed for at least 6 months; and

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- they believe they no longer meet the requirements of the new casual employee definition.

A casual employee cannot provide the notice if:

- They have had a previous notification for conversion rejected in the last 6 months; or
- There is a dispute over casual conversion already on foot.

Also, and it seems obvious, but an employee does not have to lodge a notification if they do not want to change to permanent status.

**Please note** - these changes do not come into effect for small businesses until 26 August 2025, and their employee must have been employed for 12 months prior, rather than 6 months, prior to providing a notification.

In keeping with the new definition of "casual employee" in the Fair Work Act an employment relationship is considered casual if the employment relationship is characterised by:

- no firm advance commitment to continuing and indefinite work; and
- the employee would be entitled to a casual loading or a specific rate of pay for casual employees under an Award or contract of employment.

## Employer requirements

Taking the above points into account, a member who receives a notification from a casual employee must consult with the employee and provide a written response within 21 days. As part of related discussions, remember to advise a casual employee that they will no longer receive the casual loading if they become a permanent employee.

Where an employer accepts the proposed change, the written response must include whether the employee's classification will be full or part time, what the employee's hours of work will be and when their permanent employment will commence.

An employer can only refuse the conversion request if:

- the employee still meets the definition of casual employee;
- there are fair and reasonable operational grounds for not accepting the notification, such as:
  - substantial changes would be required to the way in which work in the employer's business is organised;
  - there would be significant impacts on the employer's business operations; or
  - substantial changes to the employee's employment conditions would need to be made to ensure that the employer does not contravene an Award or enterprise agreement that would apply to the employee as a permanent employee

Members should ensure that operational needs are considered and assess the real substance, the practical reality, and the true nature of whether each casual employee continues to meet the definition under the Fair Work Act.

Where an employer and employee are unable to reach agreement as to whether permanent employment is appropriate, the dispute can be escalated to the Fair Work Commission. While the

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Commission will initially seek to resolve the dispute by informal conferencing, the Commission can arbitrate the dispute and a binding decision can be made.

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## CONTACT

Any Industrial Relations Member who has a related query should contact the HR Hotline on 1800 835 167 or contact Charles Watson, GM – IR, Policy and Governance via email: [charles@visualmediaassociation.org.au](mailto:charles@visualmediaassociation.org.au)

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