

# IR POLICY AND GOVERNANCE UPDATE



## INTRODUCTION

In this week's Bulletin we look at the RBA's interest rate decision, unemployment rates, government paid superannuation on its paid parental leave scheme, some changes to the QLD workers compensation systems, we provide a synopsis of the Fair Work Commissions new independent contractor jurisdiction, and review a decision on an employee using medicinal marijuana.

## RBA RATE DECISION

As expected, the Reserve Bank has determined once again to leave the official cash rate on hold at 4.35%. In determining to hold the official cash rate, the RBA Board stated that although inflation had fallen it continues to have some way to go until it drops to the 2-3% priority target range.

Although the USA and other countries have dropped their official interest rates recently, their previous higher interest rates along with their inflationary and economic circumstances are different to those being experienced in Australia. Nonetheless, the RBA Board stated it will continue paying close attention to developments in the global economy and financial markets, trends in domestic demand, and the outlook for inflation and the labour market in the lead up to its November decision.

## UNEMPLOYMENT RATE

In figures released last week by the ABS the seasonally adjusted unemployment rate has remained at 4.2% in August. The number of unemployed people fell by around 10K, while the number of employed people grew by around 47K, in August.

## SUPERANNUATION ON PAID PARENTAL LEAVE

With the related legislation passing last week, from July 2025 parents receiving payments from the federal governments paid parental leave scheme will also receive superannuation guarantee contributions on those payments. Those SG contributions will have a nominal interest rate amount applied to them and will then be paid to their nominated superannuation fund the following year and taxed at the current superannuation tax rate of 15%.

## QLD WORKERS COMPENSATION CHANGES

Last year's review of the Queensland Workers' Compensation Scheme has now resulted in changes to the Workers' Compensation and Rehabilitation Act 2003 (Qld) with the majority coming into effect on 23 August 2024. Queensland employers are now facing new penalties if they don't meet workers compensation requirements and have greater responsibility to manage workplace injuries under the changes.

Notably:

- Employers must provide their workers' compensation insurer with information, including wage related information, within 5 business days of a claim.
- Employers must develop a return-to-work plan within 10 days of a claim's acceptance, and insurers are required to ensure the RTW plan is in place. Further, the RTW plan must be reviewed and modified against any new information and the employees recovery progresses.
- Employers can face new penalties (up to \$16K) for failing to comply with the obligation to provide the insurer with written evidence if they consider it is not practicable to provide the

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employee with suitable duties. Additionally, insurers are required to apply greater scrutiny when determining whether suitable duties are or are not available based on the evidence provided by the employers.

- Employers and insurers are prohibited from interfering with the employees right to choose their workplace rehabilitation provider and doctors for their medical treatment.

## **FAIR WORK COMMISSION INDEPENDENT CONTRACTOR JURISDICTION**

Independent contractors earning below the High-Income Threshold (\$175K per annum) can now apply to the Fair Work Commission for help resolving disputes about unfair terms in any services contracts that were entered into on or after 26 August 2024. This new jurisdiction is in addition to the other protections available to independent contractors under the Fair Work Act, such as making claims of adverse action and general protection claims.

Under this new jurisdiction, the Fair Work Commission will have the power to make orders setting aside or varying any services contracts with unfair terms. In determining whether a contract term is unfair the Commission will consider a range of factors including:

- the parties' relative bargaining power
- there is a significant imbalance in the parties' rights and obligations under the contract
- if the contract term is reasonably necessary
- if the contract term imposes a harsh, unjust or unreasonable requirement
- if the contract provides remuneration less than that of an employee doing similar work
- any other matters it thinks is relevant.

The Commission can cancel or change unfair terms within the services contract that would relate to 'workplace relations matters' in an employment relationship if the contractor had been an employee. Such workplace relations matters include:

- remuneration, allowances or other amounts payable to employees
- employees' leave entitlements
- employees' hours of work
- enforcing or terminating contracts of employment
- industrial action by employees and employers (unless it affects essential services)
- disputes between employees and employers
- other matters that are substantially the same as matters that relate to employees or employers dealt with by or under the *Fair Work Act 2009* or state or territory industrial laws.

However, such 'workplace relations matters' won't include:

- superannuation
- workers compensation
- public holidays (except rates of pay for public holidays)
- deductions from pay
- WHS

Independent contractors who earn above the contractor high income threshold will continue to have access to remedies for unfair or harsh contract terms under the *Independent Contractors Act 2006* and within the Federal Court.

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## **DECISION OF INTEREST - MEDICINAL CANNABIS**

An employee dismissed by his employer after testing positive for the active component of marijuana, THC, in a random drug test, has lost an unfair dismissal case at the Fair Work Commission despite the fact he had been prescribed and was using medicinal cannabis.

The employee, who had been employed as a stevedore, argued that the existence of traces of the metabolite THC in his system in circumstances where he had a prescription and was not impaired was not a valid reason for his dismissal. He sought reinstatement to his former position, continuity of employment and lost pay. The employee did accept he breached his obligation under the company's Alcohol and Other Drugs (AOD) Policy to disclose his use of medicinal cannabis, but said he did so because he was led to believe his employer would ban him from the workplace or dismiss him.

However, the employer argued they did not dismiss the employee for being impaired at work, but for attending work with proscribed drugs in his system and failing to declare that he had been prescribed and was consuming medicinal cannabis.

The Fair Work Commission upheld the employer's claim that the employee's disclosure failures impacted on its "ability to discharge their obligations to take reasonable steps to ensure the safety of persons working at the port". The Commissioner accepted the AOD policy was not based on levels of impairment but set "cut-off" limits and did not distinguish between prescribed or recreational consumption of cannabis. Further, the policy also specified that workers reporting taking prescribed medicinal cannabis might be required to seek clearance from their doctors that they were fit to perform their role while taking the medication, the Commissioner added.

The Commissioner held the view that if the employee had reported his prescription, his doctor and DP World could have consulted and agreed on the appropriate number of hours to leave between consuming his medicinal cannabis and commencing work. In conclusion, the Commissioner upheld the dismissal, finding the employee was aware of the "safety critical nature of his role, and the high-risk work being undertaken around him", but "chose to consume an unconfirmed amount of medicinal cannabis around 24 hours before beginning his shift".

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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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