

# IR POLICY AND GOVERNANCE UPDATE



## INTRODUCTION

As we approach the federal governments May Budget next week, we look at this week's RBA interest rate decision, the related current unemployment and inflation rates, we remind members of the upcoming increase to the super guarantee rate, and review a decision of the Fair Work Commission on the late lodgement of an employee's unfair dismissal claim and whether there were exceptional circumstances that should permit the claim be heard.

## RBA MAY DECISION

In this week's decision, the Board of the Reserve Bank determined to leave the cash rate unchanged at 4.35%. The Board determined that recent indicators evidence that inflation continues to moderate, although it is slowing more slowly than anticipated.

The Board viewed the economic outlook as remaining uncertain and recent data have demonstrated that the process of returning inflation to target is unlikely to be smooth. The persistence of services inflation is a key uncertainty. It is expected to ease more slowly than previously forecast, reflecting stronger labour market conditions including a more gradual increase in the unemployment rate and the broader underutilisation rate. Growth in unit labour costs also remains very high. It has begun to moderate slightly as measured productivity growth picked up in the second half of last year. This trend needs to be sustained over time if inflation is to continue to decline.

## UNEMPLOYMENT RATE INCREASES SLIGHTLY IN MARCH

According to the Australian Bureau of Statistics, the seasonally adjusted unemployment rate in March was at 3.8% (or 3.9% in trend terms), an increase of 0.1%. Further, the number of unemployed individuals increased by 20K+ people, the participation rate decreased by 0.1 percentage points to 66.6%, and the underemployment rate decreased by 0.1 percentage points to 6.5%.

According to the ABS the labour market remained relatively tight in March, with an employment-to-population ratio and participation rate still close to their record highs in November 2023. While they have both fallen by 0.4 percentage points since then, they continue to be much higher than their pre-pandemic levels.

## INFLATION

During March the Consumer Price Index (CPI) rose to 3.5%, up from 3.4% in February. It appears this was a result of ongoing price increases in Housing, Food, Alcohol, and Transport indicators. The RBA, and the Treasurer, continue to agree that the appropriate target for monetary policy in Australia is to achieve an inflation rate of 2–3%.

## SUPERANNUATION GUARANTEE – 1 JULY 2024

A reminder to members that from 1 July 2024, the super guarantee rate will increase from the current 11% to 11.5% (1 July 2024 – 30 June 2025). Additionally, and from 1 July 2024, the concessional contributions cap will increase from \$27.5K to \$30K, and the non-concessional contributions cap will increase from \$110K to \$120K.

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## **MATTER OF INTEREST – THE DATE OF DISMISSAL**

The Fair Work Commission recently addressed a case involving an employee who sought an extension to file an unfair dismissal application, claiming that she had "miscalculated" the 21-day statutory period.

The employee, who was seeking an unfair dismissal remedy, claimed her termination took effect on 11 September 2023. She requested the Commission grant an extension, stating that her dismissal was communicated during an interview on 8 September 2023, and she received written confirmation on 11 September 2023. In response, the employer contended that the dismissal took effect on 8 September 2023, when the employee was informed of the termination, which was subsequently confirmed in writing on 11 September 2023.

After considering the evidence, the Commission determined that the employee was notified of her dismissal on 8 September 2023, establishing it as the effective date of dismissal. The employee cited a miscalculation of the timeframe and a mental health episode as the reasons for the delay in filing her application.

### **Were there 'exceptional circumstances'?**

The Fair Work Act requires unfair dismissal applications to be made within 21 days after the dismissal took effect. However, the Commission allows a degree of leniency if an application was filed beyond the said period under "exceptional circumstances". In determining this matter, the Commission will consider:

- the reason for the delay;
- whether the person first became aware of the dismissal after it had taken effect;
- any action taken by the person to dispute the dismissal;
- prejudice to the employer (including prejudice caused by the delay);
- the merits of the application; and
- fairness as between the person and other persons in a similar position.

The worker said she misunderstood the calculation, excluding weekends and public holidays, and, due to the shock and financial concerns, experienced a mental health episode that hindered her ability to function until mid-September. She said she initiated the application once she had recovered from this state.

### **Worker 'miscalculated' days**

In her arguments, the worker said, "she miscalculated the 21-day timeframe and did not include weekends and public holidays in her initial calculations." She said, "she first accessed the Commission website on or about 15 or 16 September 2023 and started to put together her paperwork on 18 or 19 September 2023, and believed she calculated the correct timeframe using business days".

Additionally, the worker claimed that after receiving verbal confirmation of the termination of her employment, "she was in shock, and due to financial concern and concern for her family's wellbeing, suffered a mental health episode."

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## **Was the late application accepted?**

The Commission held there was no acceptable or reasonable explanation for the delay, said that there was no exceptional circumstance in this case, rejected the worker's request for an extension, and consequently dismissed the claim.

The Commission stated that miscalculation of the required timeframe to lodge an application is not, in and of itself, an exceptional circumstance. Although the Commission was sympathetic to the worker's position, no medical evidence was provided to the Commission as to the effect of the worker's mental condition on her capacity to file the unfair dismissal application on time.

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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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