

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

In this week's bulleting we look at some of the IR issues businesses should have on their radar for the second half of the year, a synopsis of issues for using AI generators in the workplace, and we provide details about the ATO's late lodgement amnesty, the revised government paid parental leave scheme commences in July, the Victorian budget was delivered this week, and finally the Australian Energy Regulator delivered some bad news.

IR LAWS - SECOND HALF OF 2023

As we approach mid-year, we provide a heads up of some further IR issues the federal government is considering and potentially reforming.

Definition of a casual worker

The government has stated it intends to legislate an objective test to determine when an employee can be classified as a casual employee. It is proposed that this would include consideration of the terms of the contract of employment, but also consider the practical reality (or the post contractual conduct) of the relationship between employer and employee. Given the historically nebulous nature of the term 'casual' and related litigation, businesses could benefit from greater specificity.

Small business redundancy exemption

Small businesses with fewer than 15 employees are currently exempt from provisions in the Fair Work Act that entitle an employee to be paid redundancy pay. In insolvency contexts, where an employer progressively downsizes from a larger business to a smaller business, the remaining employees may lose their entitlement to redundancy pay if their employer becomes classified as a small business. The government is considering a discrete measure to address this while preserving the small business redundancy exemption.

A single national framework for labour hire regulation (in place of existing State schemes)

The government is considering a proposal to establish a national labour hire regulation is aimed at deterring non-compliance, protecting workers from exploitation, and promoting accountability and transparency in the labour hire sector. Additionally, it aims to reduce the significant red tape that labour hire providers are currently required to understand and comply with across multiple State and Territory labour hire licensing schemes, and multiple licence fees.

Enterprise bargaining and single interest agreements

The government is considering shifting the responsibility to prepare model consultation, flexibility and dispute resolution terms in enterprise agreements from the Minister for Workplace Relations to the FWC (who is otherwise responsible for preparing such terms in modern awards and otherwise responsible for approving enterprise agreements).

AI GENERATOR USE IN THE INDUSTRY

Over the last twelve months AI generators have been widely publicised. These generators can create text, music, graphic imagery and more. Like with all new technologies AI generators come with benefits and risks. In fact, the rapid rise of this technology has even led to numerous AI labs calling for a pause on further training of AI systems until they are confident that their effects will be positive and their risks will be manageable.

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Of particular relevance in our industry is that such technology has shown itself capable of generating graphic imagery. Members who utilise AI generators to create graphic imagery outputs need to be mindful of intellectual property issues. The sourced data used by the generator to create the graphic outputs may potentially infringe copyrighted material.

The corollary is that members need to be cautious about the data inputs when using AI generators. Data inputs into an AI text generator are shared with the company that operates the generator, but such inputs are often added to the training data of the generator, creating a risk that sensitive company data may be exposed to other users of the generator.

Businesses should therefore be careful with the use of this new and developing technology and have appropriate planning in place. To assist members on this issue we will be creating a related workplace policy for members to customise for use in their businesses.

ATO - SMALL BUSINESS LATE LODGEMENTS

As part of the federal governments 2023 budget announced on 9 May, the government announced a lodgement penalty amnesty program for small businesses to encourage them to re-engage with the tax system and get their obligations up-to-date.

The amnesty small businesses to bring outstanding tax returns and business activity statements (BAS) up-to-date. To be eligible for the amnesty you must meet the following criteria:

- > had an annual turnover of under \$10 million at the time the original lodgement was due
- > have outstanding tax returns or BAS that were due between 1 December 2019 and 28 February 2022
- > lodge between 1 June and 31 December 2023.

The amnesty doesn't apply to privately owned groups, or individuals controlling over \$5 million of net wealth. If your business is eligible for the amnesty, any failure to lodge penalty that applies to the late lodgement will be automatically remitted. However, general interest charge will continue to apply. If this relates to your business, speak with your Accountant, tax agent or contact the ATO directly for further details.

GOVERNMENT PAID PARENTAL LEAVE SCHEME

The Paid Parental Leave scheme is changing from 1 July 2023. The changes, which come into effect for parents whose children are born or adopted from 1 July 2023, include an entitlement to 20 weeks' paid leave, up from the current 18 weeks, with two weeks reserved on a 'use it or lose it' basis.

The primary changes to the government scheme are:

- > The existing maximum 90 days (18 weeks) parental leave pay will be combined with the two weeks' father and partner pay to provide a single 100 days (20 weeks) scheme, to be shared between each parent.
- > Parents can take days at the same time and can be at the same time as paid employment related leave, and between periods of paid work.

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- > Parents will be able to receive a maximum of 18 weeks' parental leave pay each, and a maximum of 20 weeks' parental leave pay between them (e.g. one parent could receive 15 weeks' pay, and one parent 5 weeks' pay, or both parents could receive 10 weeks' pay each).
- > The fixed 12-week parental leave pay period (and the requirement to not return to work in order to be eligible) will be abolished, meaning that claimants can receive parental leave pay in multiple blocks, of at least a day at a time, up to two years from the birth or adoption of their child.
- > The means test for eligibility will be amended by introducing a \$350K per annum family income limit test under which claimants can qualify for parental leave pay if they do not meet the individual income test.
- > Eligible fathers and partners will be able to access parental leave pay regardless of whether the birth-parent meets the income test or residency requirements.
- > Employees who are single at the time they claim will be able to receive the full 20 weeks' parental leave pay.

Employer issues

- > Review and amend any related workplace policies to reflect the legislative scheme amendments.
- > Employees who want to use remaining paid parental leave flexibly when they return to work from parental leave need to come to an agreement with their employer about how it will work in their circumstances.
- > Employer related record keeping and related payslip requirements remain unchanged from the current scheme.
- > Should one of your employees make related enquiries about the scheme we recommend referring them to [Services Australia](#) or via [myGov](#) for further information.

VICTORIA BUDGET 2023

Victorian Treasurer, Tim Pallas, delivered that states budget this week. He stated the Andrews Government long-term plan to address COVID response-related borrowing would ensure election commitments from last year are met, major investments in productive infrastructure substantially continue to be delivered, and SME sized businesses are supported, all without a diminution of services to the public following the increased reliance on government services following the pandemic.

The COVID Debt Repayment Plan, spanning as much as ten years, will be underpinned by changes to tax arrangements on SME sized businesses, a shift in corporate tax burdens to larger employers, and changes in taxation arrangements for commercial and industrial landholders. Key themes from this year's Victorian budget that are relevant to industry include the following.

Repaying the COVID-19 Debt

- > "COVID Debt Levy" - an additional 0.5% in payroll tax for businesses with national payrolls above \$10M, and a further 0.5% for businesses with national payrolls over \$100M – expected to raise \$3.9B over the forward estimates.
- > Tax free threshold for general land tax rates will decrease from \$300,000 to \$50,000, and;

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- > \$500 additional fixed land tax charge for landholdings between \$50,000 and \$100,000, \$975 for landholdings above \$100,000, and a 0.1% land tax rate increase for general and trust taxpayers with holdings over \$300,000 and \$250,000 respectively – these measures are expected to raise \$4.7B over the forward estimates.
- > Reductions in corporate and back office functions, labour hire staff, and consultancy expenditure across the public service – expected to raise \$2.1B over the forward estimates.
- > All of these measures will sunset after ten years.

There was considerable coverage in the lead up to the budget about the growing level of Victorian public sector debt, which the Government has sought to address with these temporary announcements in the Budget.

Small Business

Small businesses have been offered some budget relief, with the payroll tax threshold rising from \$700,000 to \$900,000 from July 2024, then rising to \$1M in 2025.

Infrastructure and Transport

Infrastructure has been constant portfolio of focus for the Andrews Government since Labor came to power in Victoria in 2014, and that remains the case in this budget. The “Big Build” program of projects, such as the Airport Rail link, has had \$7.3B allocated.

Skills and Education

Education and skills are typically key pillars of the Labor policy platform, and they have received considerable allocation of funding in this budget. Relevant funding allocation includes:

- > \$186M to expand eligibility for VET subsidies.
- > \$170M for the Building Better TAFE Fund.
- > \$90M to meet expected demand for training.
- > \$90M for TAFEs to continue to provide priority skills, job placement support, improve student wellbeing and to maintain high-quality workforces

Timber Industry

While the phasing out of the native timber logging industry is being sped up by the government, it will provide additional funding to support timber workers transitioning out of the industry. This budget has allocated more than \$200 million in funding for workers in the industry to be retrained.

Given the state of Victoria’s finances, and the stated budgetary measures, the Andrews Government will likely face criticisms about the taxes on big businesses and cost blowouts associated with large scale infrastructure projects.

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ELECTRICITY PRICES TO RISE ON THE EASTERN SEABOARD

Small businesses on the eastern seaboard are set to face power bill increases of up to \$1,310 a year from 1 July 2023, the Australian Energy Regulator has confirmed. The AER's decision will directly affect around 600,000 customers in South Australia, New South Wales and South-East Queensland who are on the default offer, which is a benchmark price designed to keep a lid on price rises for household and small business customers. The Chairperson of the AER stated the increases reflect an updated position to take into account raising inflation.

In New South Wales, south-east Queensland and South Australia, small business customers can expect increases of between 14.7% to 28.%, under the final default market offer, released by the regulator today. In Victoria, small businesses on the default market offer will be hit with an average price increase of 25% under a separate determination from the state's Essential Services Commission.

CONTACT

Any Industrial Relations Member who has a related query should contact Charles Watson, GM – IR, Policy and Governance via email charles_watson@pvca.org.au

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