

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

This week we provide a number of COVID updates and some related issues to consider heading into 2022, Queensland opens its borders to the fully vaccinated, further easing of restrictions in NSW, interest rates remain on hold, a relevant decision from the Fair Work Commission on mandating COVID-19 vaccinations in the workplace, and a reminder on Director Identification Numbers.

AUSTRALIA'S COVID-19 VACCINATION RATES

This week Australia has moved to 89.2% of people aged 16 and over who are now double vaccinated and 93% have had at least one dose. The ACT continues to lead the charge with over 95% fully vaccinated, Victoria, Tasmania and NSW are now over 90% fully vaccinated. South Australia is at 84% with Queensland, Western Australia, and the Northern Territory are at 80% fully vaccinated.

COVID-19 Vaccine Booster Shots

Members should consider the issue and an approach to COVID-19 booster shots for workers in the new year. Booster shots are available to everyone over 18 years of age and who are fully vaccinated. Ordinarily a booster dose can be undertaken if it has been five months or longer since the second dose of a COVID-19 vaccine.

The Moderna vaccine has been approved by both the Therapeutic Goods Administration ("TGA") and the Australian Technical Advisory Group ("ATAGI") for booster purposes. Along with Pfizer, this will give everyone two options for their booster shot in the new year.

QUEENSLAND BORDERS OPEN

In some good news, Queensland opened its borders to NSW, ACT, Greater Adelaide and Victoria for individuals who are double vaccinated from 13 December 2021. For travellers from interstate hotspots, no quarantine will be required for the fully vaccinated, however they must provide a negative COVID-19 test in the previous 72 hours prior to entry. Travellers from interstate hotspots will also need to agree to get a COVID-19 test five days after arrival.

NSW COVID RESTRICTIONS EASING

From 15 December 2021, NSW is easing many of the current COVID-19 restrictions in social settings as well as workplace related requirements. Effective from tomorrow:

- > From a social perspective, masks will only be required to be worn on public transport and unvaccinated front of house hospitality staff, and strongly encouraged where social distancing is not possible.
- > Most density limits will be removed, and entry related QR coding will only be necessary in limited facilities such as aged care, gyms, and registered clubs.
- > Working from home will be at the discretion of their employer.
- > Carpooling will be permitted.

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Although we are looking forward to these eased conditions, but given the emergence of the Omicron variant and the rise in NSW COVID-19 cases over the last week, TRMC continues to recommend members remain vigilant into the new year. As occupiers of private premises, members may consider:

- > Continuing to hold current entry requirements in place – QR coding, citing vaccination status, determining visitor access and related safety protocols.
- > Determine whether to have workers return to onsite work at this time. If you do, ensure those workers are given some notice and appropriate guidance and communication is provided. It could be the first time they have been back onsite for some months.
- > The corollary is that if workers are to recommence working onsite, advise those production workers who have remained working onsite this year so they are prepared.
- > If a worker, contractor or visitor does contract COVID-19 you remain obligated to contact SafeWork NSW (ph. 13 10 50). SafeWork NSW will talk through the situation and offer guidance. The information you provide will also be passed to NSW Health, as part of their contact tracing process.
- > Your COVID-19 Safety Plan remains one of the best ways to ensure a safe workplace environment.
- > NSW Health strongly advises people to continue wearing face masks in settings where they cannot socially distance.
- > Continue to communicate with your workers and make them part of the plan to ensure their safety and that of their co-workers and families.

WORKPLACE COVID-19 GENERAL UPDATES

As we head towards the last few weeks of the year, we remind members that although significant improvements on COVID-19 have been experienced in all states and territories, the situation will remain somewhat unpredictable into 2022. There will be a few issues to keep front of mind.

Workplace COVID Plans and Practices

The purpose of these plans are to prioritise the safety of all workers, and to assist in responding should a positive case occur in the workplace. Revisit your plan early in the new year and ensure their currency and appropriateness for current conditions.

Returning to onsite work

Members who have workers returning to onsite work in the new year will need to ensure they are aware and remain compliant with all COVID safety measures in place within your workplace. There will be a need for some reintegration of those returning workers and those who have been onsite throughout this year.

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Schedule X sunsets

It's been a potentially useful option that TRMC were able to have reinstated for employers and employees in the industry, however Schedule X within the Graphic Arts, Printing and Publishing Award will expire on 31 December 2021. The clause allowed employers and employees to take unpaid pandemic leave or annual leave at half pay if an employee was required to self-isolate.

COVID-19 Worker Vaccinations

It is beyond doubt that vaccinations substantially reduce COVID-19 infection risks and reduce risks of serious illness if an individual is infected. Vaccinations are a practicable measure to reduce the safety risk to each worker, their colleagues and their families. As an industry we have taken up the challenge and have workplaces with high to 100% full vaccination rates.

By now each member will have determined its position as to the vaccination requirements of workers, contractors and even clients so as to attend onsite. This may be as a result of company requirements and direction, company policy and or public health orders as has been seen in numerous states.

Unfortunately, there may be a point in time where a member has to determine its options in relation to a worker who has determined they will ultimately decide not comply with that company direction, policy or public health orders in order to attend work. However, with choice comes consequence. If this occurs there is no one way to handle the matter and must be dealt with on its own circumstances and merits. Given there has been a spike in vaccination related unfair dismissal claims in the Fair Work Commission, we ask that members contact Charles Watson (details below) here at the Collective to discuss your options before you make any decision about a particular worker.

INTEREST RATES REMAIN ON HOLD

In its last meeting for the year, the Board of the Reserve Bank of Australia has determined:

- > to hold the official cash rate at 0.1%.
- > continue to purchase government securities at the rate of \$4 billion a week until at least mid-February 2022.

On Australian economic factors generally, the RBA stated:

- > The Australian economy is recovering from the setback caused by the Delta outbreak. High rates of vaccination and substantial policy support are underpinning this recovery.
- > Household consumption is rebounding strongly and the outlook for business investment has improved.
- > The emergence of the Omicron strain is a new source of uncertainty, but it is not expected to derail the recovery.

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- > The economy is expected to return to its pre-Delta path in the first half of 2022.
- > Inflation has increased, but, in underlying terms, is still low, at 2.1 per cent. The headline CPI inflation rate is 3 per cent and is being affected by higher petrol prices, higher prices for newly constructed homes and the disruptions in global supply chains. A further, but only gradual, pick-up in underlying inflation is expected.
- > The RBA will not increase the cash rate until actual inflation is sustainably within the 2 to 3% target range. This will require the labour market to be tight enough to generate wages growth that is materially higher than currently being experienced.

At its February 2022 meeting, the RBA Board will consider the bond purchase program. By mid-February, the RBA will hold a total of \$350 billion of bonds issued by the Australian Government and the states and territories, with these holdings providing significant support to the economy. In reaching its decision in February, the Board will be guided by the same three considerations that it has used from the outset of the program: the actions of other central banks; how the Australian bond market is functioning; and, most importantly, the actual and expected progress towards the goals of full employment and inflation consistent with the target.

BHP DECISION - MANDATORY VACCINATION REQUIREMENTS AND CONSULTATION

Mt Arthur Coal is a part of the BHP Group of companies and manages a coal mine in the Hunter Valley. In October 2021, Mt Arthur announced a site access requirement that workers will need to have had at least one dose of the COVID-19 vaccine by 10 November 2021 and be fully vaccinated by 31 January 2022. The CFMMEU made an application to the Fair Work Commission, in accordance with the dispute resolution procedure in the Enterprise Agreement claiming a failure to consult by the company.

The Commission's findings

Effectively, the Full Bench of the Commission found the company failed to meaningfully consult in line with their policies and enterprise agreement obligations. No real value was put on worker feedback and there was inadequate access to information. The Commission actually held that if the company had appropriately consulted with workers, provided better context around their surveying, and rationale/data supporting the proposal, then the vaccination direction would likely have been reasonable, particularly in a dynamic environment.

The Lesson

Over the course of this year we have seen various challenges to employer vaccination requirements and government directions by individuals and groups. These have all generally failed. However, an employer's failure to appropriately and genuinely consult with workers on policy implementation where such a requirement exists (Fair Work Act, health and safety legislation, Awards, enterprise agreements, company policies and practice) can result in a dispute arising. Such a dispute would require an employer be able to defend its actions and allow the Commission and the 'other side' to scrutinise company processes.

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DIRECTOR IDENTIFICATION NUMBERS

As detailed in an earlier Bulletin, the framework for the Director Identification Number (“DIN”) is now up and running. A DIN is a unique identification number for each eligible individual, which once issued, will remain with that individual for all directorships and for life. The introduction of the regime is to complement the government's combatting illegal Phoenixing reforms introduced to curb creditor-defeating disposition transactions by preventing director identity fraud, a practice commonly seen in illegal Phoenixing activity.

Who will need a DIN?

You will need a director ID if you are an eligible officer of a company or other body corporate registered under the *Corporations Act 2001*. Essentially, an eligible officer is a person who is appointed as:

- > a director.
- > an alternate director who is acting in that capacity.

Application process

Applications for a DIN are made via the [Australian Business Registry Services](#) website.

Application timeframes

When a person must apply for your director ID depends on the date they became a director:

- > on or before 31 October 2021, they have until 30 November 2022 to apply;
- > **between 1 November 2021 and 4 April 2022**, they have 28 days from their date of appointment to apply; and
- > **from 5 April 2022**, they apply before their appointment.

A FESTIVE SEASON

Given we have all made it to week 50 of the year, and that this is likely the last IR Bulletin for 2021, I would like to thank all the members for their ongoing support throughout the year. Additionally, I hope we have assisted and supported you on the IR and Policy front and that we have appropriately represented the industry and its needs. We already have a big year planned for 2022, with many interesting and beneficial member projects coming your way. Have a happy, safe and restful Christmas period.

CONTACT

Any Industrial Relations Member who has a related query should contact Charles Watson, GM – IR, Policy and Governance at The Real Media Collective via email charles@thermc.com.au or mobile:+61 428 568 032.

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**DISCLAIMER**

The content of this update, current at the date of publication, is intended to provide general guidance and consideration for TRMC Members only. The content does not constitute advice and should not be relied upon as such. Specific advice about your circumstances should be sought separately before taking any action. TRMC recommends Members ensure any related decisions are made on current and up to date information.