

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

Okay dear member, this week we look at the newly released inflation and CPI figures, a recent decision that illustrates why appropriate drafting of post-employment restraints are important if an employer is going to enforce them, the federal governments national reconstruction initiative, a COVID update, and a few ASIC updates.

ABS RELEASE INFLATION/CPI FIGURES FOR JUNE

In sobering news, the Australian Bureau of Statistics have this week released their Consumer Price Index figures for the period to the end of June 2022. Essentially:

- > The Consumer Price Index (CPI) rose 1.8% this quarter.
- > Over the twelve months to the June 2022 quarter, the CPI rose 6.1%.
- > The most significant price rises were new dwelling purchases by owner-occupiers (+5.6%), Automotive fuel (+4.2%) and Furniture (+7.0%).

Effectively, inflation over the year to June hit 6.1%, which is the highest level in 21 years. This outcome will most likely result in the Reserve Bank further lifting interest rates again at their Board meeting next week.

POST-EMPLOYMENT RESTRAINTS

A recent decision of the Federal Court has reiterated the need for contractual post-employment restraints to be appropriate to the circumstances. In that decision a state manager for United Petroleum, a wholesale petroleum company, resigned to take up a role with an aviation related company which also operated in the petroleum products sector. His contract of employment with his old employer contained post-employment terms including that the employee:

- > be engaged, involved or materially interested in any activity of "substantially the same kind" as his United Petroleum role, "in which use or disclosure of confidential information may be useful or advantageous"; and
- > provide services to or be associated with any business activity that was competitive with United Petroleum.

The old employer took the view that the employee had breached such terms and sought interim injunctive relief in the Federal Court.

In dismissing the application for injunctive relief, it was held that although the managers acceptance of the role at the new employer could be a *possible* breach of his contract, the manager's post-employment restraints were far tighter than what was necessary to protect an employer's interests. The judges view was that the restraints appeared to "trespass beyond what was necessary" to protect its interests.

The restraints seemed to "extend so as to prevent the manager from undertaking employment regardless of whether he possesses information that might be used to undermine United Petroleum's otherwise legitimate commercial interests", he pointed out. The clause appeared to extend beyond what the authorities recognise as ripe for legitimate or lawful enforcement. Turning

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to the balance of convenience, the Judge said it tended against granting relief, as it would have precluded the manager from taking up his new role for another month.

Post-employment considerations

Including post-employment restraints into contracts of employment are important for protecting an employer's confidential information and may include restraining an employee from working for a competitor for a period of time after cessation of their employment.

However, what this decision highlights is that contractual based post-employment restraints need to be appropriately drafted for the specific role and employee. They must be based on what sensitive or confidential information that employee will know from having been in their role.

Further, restraint periods need to be appropriate for the circumstances. In my experience any restraint that goes beyond 12 months will need to have very good reasoning behind it. Ultimately, if an employer is going to attempt to enforce a post-employment restraint, such terms must be reasonable for the circumstances and the information the employer is attempting to protect.

MODERN MANUFACTURING INITIATIVE v. NATIONAL RECONSTRUCTION FUND

Prior to the previous federal election, the previous government had announced a \$1b funding project under its Modern Manufacturing Initiative program that was specifically targeted at defence, resources, space and medical industries. It was their view that such a program would create tens of thousands of jobs. Given the current unemployment rate of 3.5%, and the labour shortages facing most industries, it was left unanswered how Australia would find the labour to develop those initiatives over the next few years.

Although the new government said it will honour all contracts already signed under the scheme, they will be reviewing the scheme and the funding to determine value for money. Further, the new government plans to imminently launched its own \$15 billion National Reconstruction Fund, with unallocated funds from the Coalition's Modern Manufacturing Initiative (MMI) to be "reprioritised". It has been announced that the new initiative will have its own independent board it remains to be seen whether this incoming program will be the same vehicle with a new paint job, or program that actually makes a difference remains to be seen.

COVID UPDATE

Given its morphing ability, this virus is not going away soon. As a result, Australia is experiencing over 40,000 reported cases a day, there are over 370,000 active cases, and there are over 5000 people currently hospitalised due to the virus. The majority of cases are in the 20 – 60 year old age range, and most deaths are in males between 60 – 89 year old age group.

Members report they continue to stay vigilant to the issue and apply appropriate measures in their workplaces so as to minimise risks to their employees and the operational ability of their businesses. The Collective recommends members regularly revisit their workplaces settings and protocols so as to continue maintaining a safe work environment.

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ASIC EXTENDS 30 JUNE 2022 REPORTING DEADLINES FOR UNLISTED ENTITIES

ASIC has just announced that they are extending the reporting deadlines unlisted entities with 30 June 2022 reporting obligations to ASIC by one month. This involves year-ends and half-years ending between 24 June 2022 – 7 July 2022. Similar deferrals have been applied to related reporting obligations including requirements to send the financial report to members and to hold the AGM. The lodgement date for compliance plan audit reports has also been extended by one month.

There has been no deferral of deadlines for listed entities, registered foreign entities or if your reporting date is outside the specified window. ASIC has said they will continue to consider relief for other entities and balance dates on a case-by-case basis.

The extended deadlines will assist with any pressures on resources for the financial reporting and audits of smaller entities and provide adequate time for the completion of the audit process considering challenges presented by COVID-19 conditions. This extension is likely to be beneficial as numerous members who have stated their reporting obligations to be challenging due to the currently high workloads and backlogs being faced by Accountants and Auditors in Australia.

Directors of some unlisted companies may be asked by their auditors to facilitate the spreading of deadlines for lodging audited financial reports. Directors should consider the information needs of shareholders and other users of their financial reports, as well as meeting borrowing covenants or other obligations, when deciding whether to depart from the normal statutory deadlines.

ASIC WARNS SMALL BUSINESSES TO BE VIGILANT ABOUT PAYMENT REDIRECTION SCAMS

In further news from ASIC, they are urging small businesses to be wary of payment redirection scams as the latest Targeting scams report from the Australian Competition and Consumer Commission (ACCC) showed that these scams caused the highest losses to businesses in 2021.

Payment redirection scams involve scammers impersonating a business or its employees via email and requesting an upcoming payment be redirected to a fraudulent account. In some cases, scammers hack into a legitimate email account and pose as the business, intercepting legitimate invoices and amending the bank details before releasing emails to the unsuspecting business. Other times, scammers impersonate people using a registered email address that is very similar to one from a legitimate business.

The ACCC's data shows that overall, micro and small businesses lost the most money to scams in 2021. Micro businesses are defined in the Targeting scams report as those with 0-4 staff, while small businesses are defined as those with 5 -19 staff. Scamwatch received 3,624 reports from businesses with \$13.4 million reported lost in 2021. Of that, \$7 million was attributed to micro and small businesses. Small businesses had the highest median loss at \$3,812.

If you think you've been scammed:

- > Stop sending money to the company and contact your bank.
- > Be wary of falling for a follow-up scam or offers to recover your money.

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- > Report suspected scams to [SCAMwatch](#) or to the Australian Cyber Security Centre at [ReportCyber](#).

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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