10 November 2022

IR POLICY AND GOVERNANCE UPDATE

INTRODUCTION
This week we look at the hotly debated Bill to amend the Fair Work Act and related legislations, the RBA's latest interest rate decision, and hiring employees with post-employment restraints.

PROPOSED IR AMENDMENTS – PUSHING A CAKE THROUGH A KEYHOLE
On 27 October 2022, the government's Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 was tabled in Federal Parliament. The Bill, which runs to around 250 pages, proposes important changes to the *Fair Work Act* and related legislation. Many of the reforms had been flagged in the policy platform that Labor took to the May 2022 election. Others, such as those related to bargaining and flexible work requests, reflect commitments made by the government following the Jobs and Skills Summit in September 2022.

As highlighted in previous bulletins, relevant key proposals include:
- broadening the capacity for employees to request flexible working arrangements;
- restricting the use of fixed term contracts;
- addressing the lack of pay equity for female workers;
- adding a prohibition on work-related sexual harassment to the FW Act;
- expanding the options for multi-employer bargaining;
- simplifying the processes for making and varying single-enterprise agreements;
- amending the better off overall test (BOOT) for EA's;
- expanding access to protected industrial action and altering the process for taking it;
- criminalising wage theft;
- making it easier for the Fair Work Commission to resolve "*intractable*" bargaining disputes;
- changing the rules for the termination and sunsetting of enterprise agreements;
- expanding access to the small claims procedure for recovering underpayments; and
- abolishing the Australian Building and Construction Commission and the Registered Organisations Commission.

Tactically, the Bill proposes to push this wide range of complex amendments though in one tranche, rather than logically sectioning the issues for appropriate parliamentary debate, review and conslutation. As we have seen under previous governments, attempting to force omnibus style legislation through on such a sensitive societal issue as workplace relations can be like forcing a cake through a keyhole, it is ill considered and going to be messy.

Multi-employer agreements
Of particular concern are the proposed amendments to "multi-employer" agreements proposal. Currently under the Fair Work system, multi-employer agreements are already permitted in some circumstances that permit enterprise agreements that apply to more than one employer and their relevant employees, and in some cases one or more unions. These types of agreements typically occur within an industry that has multiple large employers or organisations performing the same types of work. As it stands, bargaining for a multi-enterprise agreement can only occur where two or more employers voluntarily agree to bargain together, thus there is no ability for employees to put forth a majority support determination to the Fair Work Commission when employers have not agreed to bargain.

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Essentially, the proposed amendments seek to extend and expand multi-employer bargaining. A major concern for industry is the criteria for when a union can seek a multi-employer agreement remains unreasonably loose. It may lead to an unjustified expansion of multi-employer bargaining and industrial action rather than encouraging parties to make agreements at the individual workplace level.

Being honest, and pending further amendments to this element of the Bill I have to say it is broad, general and unclear as to how this particular element is actually meant to operate. The current proposal on "multi-employer" agreements within the Bill is not an intelligent way to go about raising productivity or improving workers conditions in Australia. The proposed multi-employer bargaining arrangements represent a lack of consultation and a lack of understanding of private sector business operations. Every business and every site in our industry operates under different costs and revenue arrangements.

The Government has already made concessions on this element of the Bill. Further changes may arise following scrutiny by the Education and Employment Legislation Committee who will deliver its report to Parliament on 17 November 2022 and the PVCA will be providing a submission to the Senate Committee.

This Bill is and remains fluid at this time and will continue to be debated in the House of Representatives and the Senate, and with only two more sitting weeks to get the amendments through the Senate. The scope and complexity of the Bill may well make that difficult to achieve this year.

RBA'S INTEREST RATE DECISION

Last week the Reserve Bank of Australia raised interest rates again this week. In its November meeting on Tuesday, the RBA Board decided to increase the cash rate by 25 basis points to 2.85%.

As is the case in most countries, inflation in Australia is too high. Over the year to September, the CPI inflation rate was 7.3%, the highest it has been in more than three decades. Global factors explain much of this high inflation, but strong domestic demand relative to the ability of the economy to meet that demand is also playing a role. Returning inflation to target requires a more sustainable balance between demand and supply.

A further increase in inflation is expected over the months ahead, with inflation now forecast to peak at around 8% later this year. Inflation is then expected to decline next year due to the ongoing resolution of global supply-side problems, recent declines in some commodity prices and slower growth in demand. Medium-term inflation expectations remain well anchored, and it is important that this remains the case. The Bank's central forecast is for CPI inflation to be around 4.75% over 2023 and a little above 3% over 2024.

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The Australian economy is continuing to grow solidly and national income is being boosted by a record level of the terms of trade. Economic growth is expected to moderate over the year ahead as the global economy slows, the bounce-back in spending on services runs its course, and growth in household consumption slows due to tighter financial conditions. The Bank's central forecast for GDP growth has been revised down a little, with growth of around 3% expected this year and 1½ per cent in 2023 and 2024.

The labour market remains very tight, with many firms having difficulty hiring workers. The unemployment rate was steady at 3.5% in September, around the lowest rate in almost 50 years. Job vacancies and job ads are both at very high levels, although employment growth has slowed over recent months as spare capacity in the labour market has been absorbed. The central forecast is for the unemployment rate to remain around its current level over the months ahead, but to increase gradually to a little above 4% in 2024 as economic growth slows.

HIRING AN EMPLOYEE WITH POST-EMPLOYMENT RESTRAINTS

Before employing someone, particularly in a sales or business development role, it's judicious to check whether they are subject to any post-employment restraints from their previous role. Such restraints could include confidential information, intellectual property, and solicitation of clients and employees of their previous employer. If such restraints exist, you should consider what they mean for your business and for the new employee as they commence their duties.

Conversely, for those employers who have a departing employee it is acceptable to remind the departing employee of their required compliance and their ongoing post-employment obligations. These restraints and obligations will hopefully be contained within their employment contract. If there are no post-employment restraints, or they aren't drafted appropriately, it is difficult to injunct an ex-employee.

CONTACT

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