



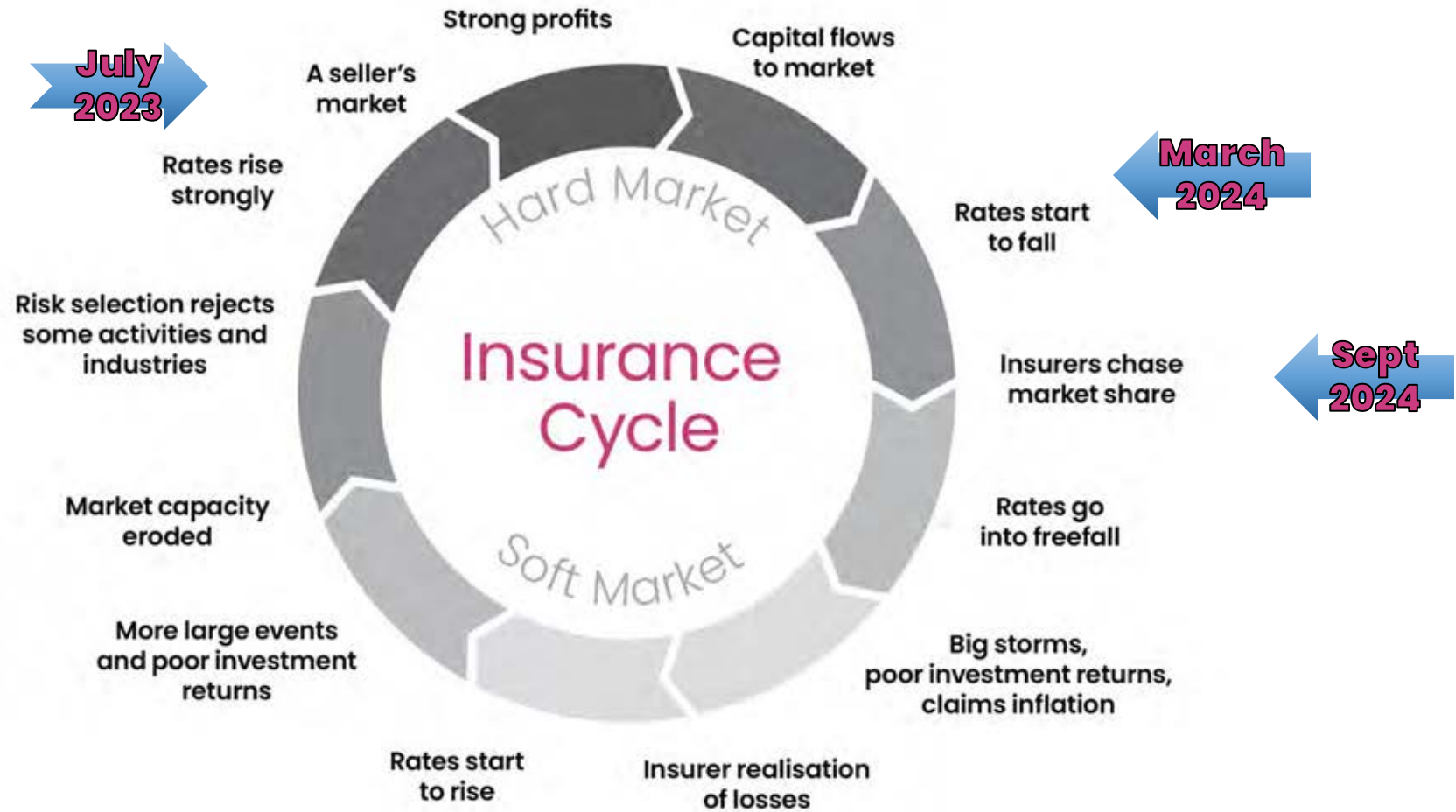
Insurance Market Update

26 September 2024

Simon Gray | Practice Leader, Construction Professionals



Insurance Market Cycle



What impacts the Cycle?

- 2001 – HIH collapsed, Lloyd’s withdrew
- 2007 – 2008 – GFC – no significant impact
- 2008 – Insurers, including Lloyd’s returned to the market – market softened
- Long “soft” market
- 2014 – Lacrosse
- 2017 – Worst catastrophic weather/climate year in history, Lloyd’s lost \$3B, Grenfell – Loss ratios went over 100% for PI
- 2018 – Lloyd’s Decile 10 report – most PI insurers at Lloyd’s and around the world left PI – but not all! Some stayers are in this room tonight.
- 2023 – Lloyd’s remediation had taken place, interest rates, huge supply of capital
- 2024 – new insurers, return of Lloyd’s – supply and demand!

How long with this Cycle last?

- The usual rule applies - like the economy or interest rates - it is an educated guess
- Any insurers in the room want to estimate:
 - 3 years
 - 7 years
 - 10 years
- The current market is “good news” for construction industry professionals
- When economic forces, loss ratios change then rates will turn



Registration for Engineers

- Sections 49 and 50 of the *Design and Building Practitioners Act 2020* (DBP Act) provide for registration and codes of practice to be imposed on registered practitioners.
- Compliance with the Practice Standard is a condition of registration for all Professional Engineers registered under the DBP Act when carrying out “professional engineering work”.
- **Long** story – consultation drafts, fitness for purpose (“FFP”) requirements, debates, insurability, more drafts, more consultations, workshops, more revised standards
- Initial draft – express FFP requirement
- Negotiation, FFP “un-insurability”
- March 2024 – Practice Standard



Practice Standard – Engineers

- **March 2024 – Practice Standard – “commences” 1 September 2024**
- **Revised FFP requirement in the Code**
 - Rational , sensible, achievable & insurable
 - Accords with an Engineer’s duty of care and reasonable practice standards
- **No – it doesn’t! Complete overhaul of the building laws**
- **August 2024 – Draft Building Bill NSW 2024**
 - Consolidation of 9 pieces of building work legislation which Includes Home Building Act 1989, DBP Act 2020 as well the Architects Act 2003.
 - Introduction of licensing & registration for a broader group of professionals (Building Designers and Interior Designers) as well as Building Trades (Water proofers, plumbers etc.)
 - CPD required for the entire building industry
- **Will there be a revised Practice Standard 2.0? Will they change the FFP Requirement again?**





General Advice Disclaimer

- This presentation contains general information and does not take into account your individual objectives, financial situation, or needs.
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Construction Claims Trends

Joe Hershewe | Practice Leader, Claims



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Claims are our 'shop window'. We believe that payment of our clients' claims is a key performance indicator.

We encourage and facilitate collaboration and communication amongst all parties to a claim.

Our expertise in preparing technical claim submissions to address complex indemnity issues is evidenced by a proven track record of settling claims successfully.

We adopt a conclusion driven approach to all notifications and claims, recognising that prolonged disputes rarely benefit our clients or insurers.



\$54.1m

IN CLAIMS CURRENTLY
MANAGED BY BELLROCK
CLAIMS TEAM

74

CLAIMS PER MONTH
SETTLED BY BELLROCK
CLAIMS TEAM ON AVERAGE

\$19.9m

IN CLAIMS PAID FOR
BELLROCK CLIENTS IN
THE LAST 12 MONTHS

Claims Trend – High Level

70%

General liability or professional standard of care claims & Mitigation claims.

15–20%

Worker & hired worker Injury Claims.

10–15%

Fee disputes & variations.

Claims Trends and beyond

- Defects when remediating cladding & cladding exclusions.
- Cracked slabs.
- Latent defect claims involving all parties to any build.
- Claims around variations versus negligent services.
- Poor recording keeping impacting defence of claims.
- Sub-contractor insolvencies and insurance implications.
- Timeliness of notifications and impact of claims advocacy.



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CONTRACT TIPS & FITNESS FOR PURPOSE

Bellrock Seminar

Charles Thornley, Partner



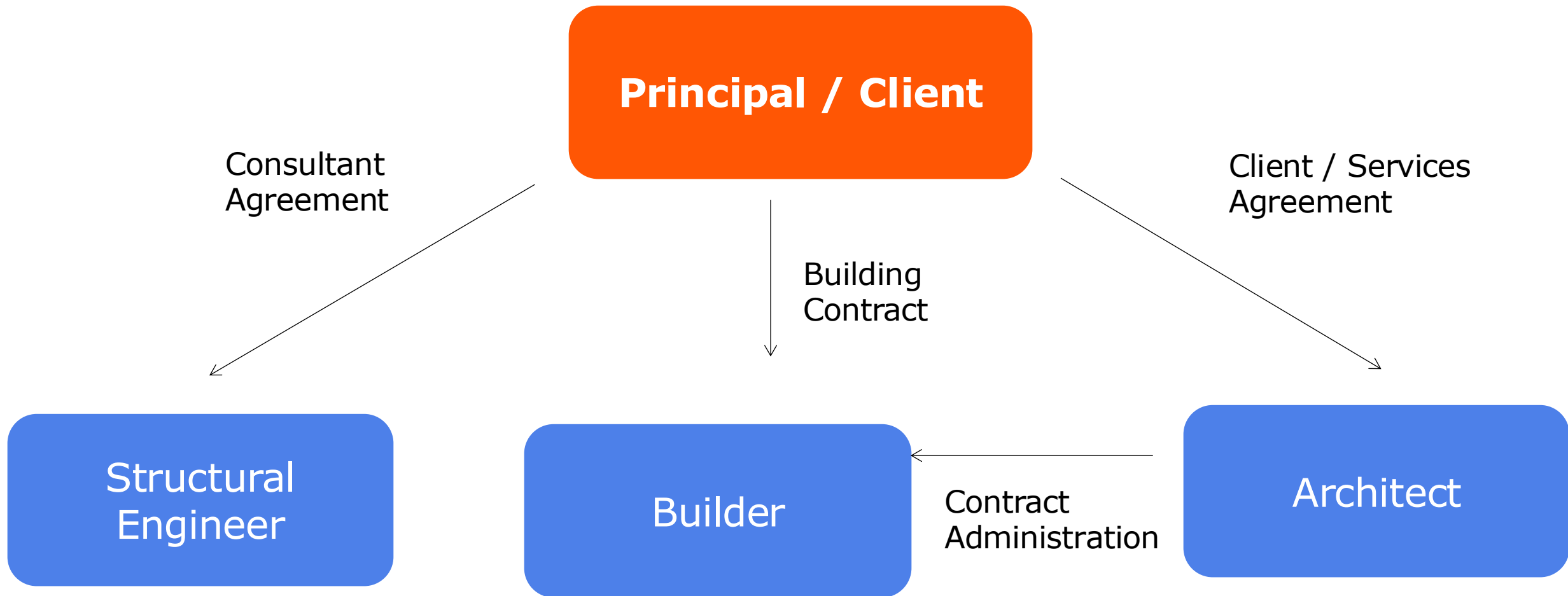
26 September 2024

**LANDER
& ROGERS**

CONTRACT TIPS

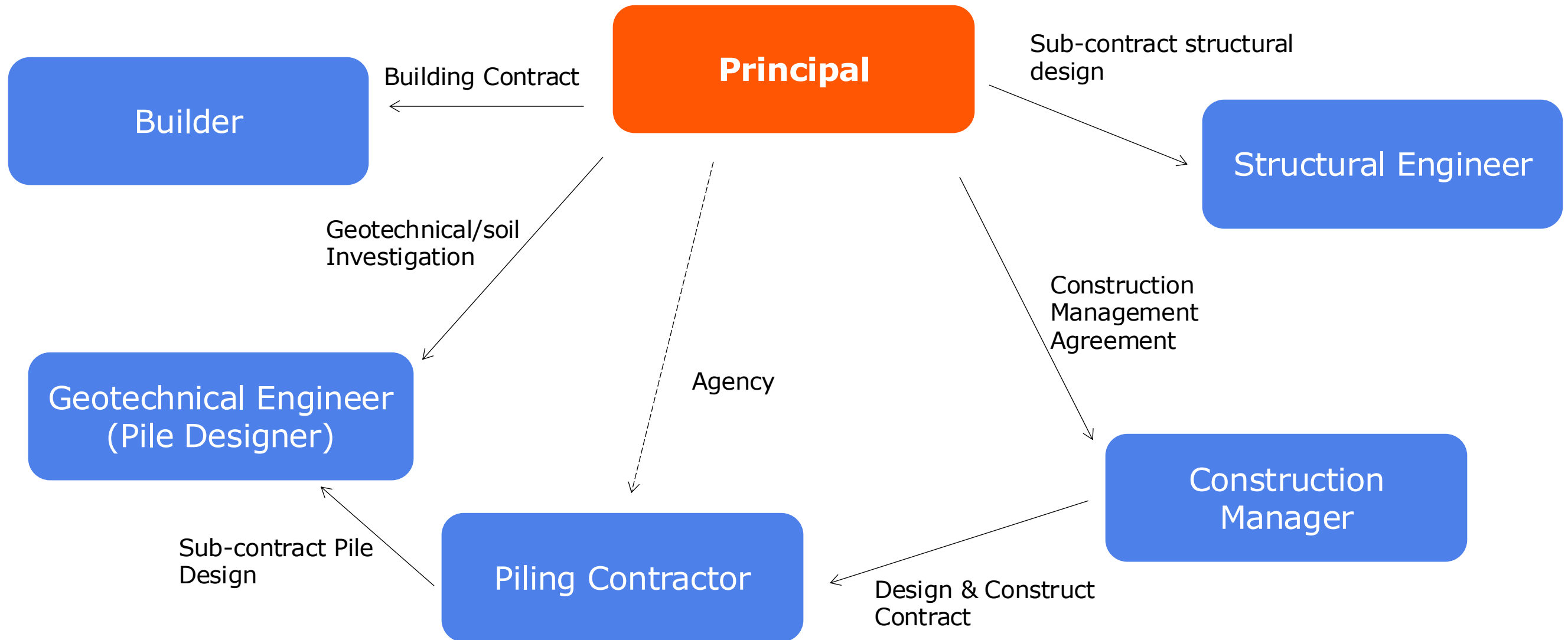


SIMPLE CONTRACT



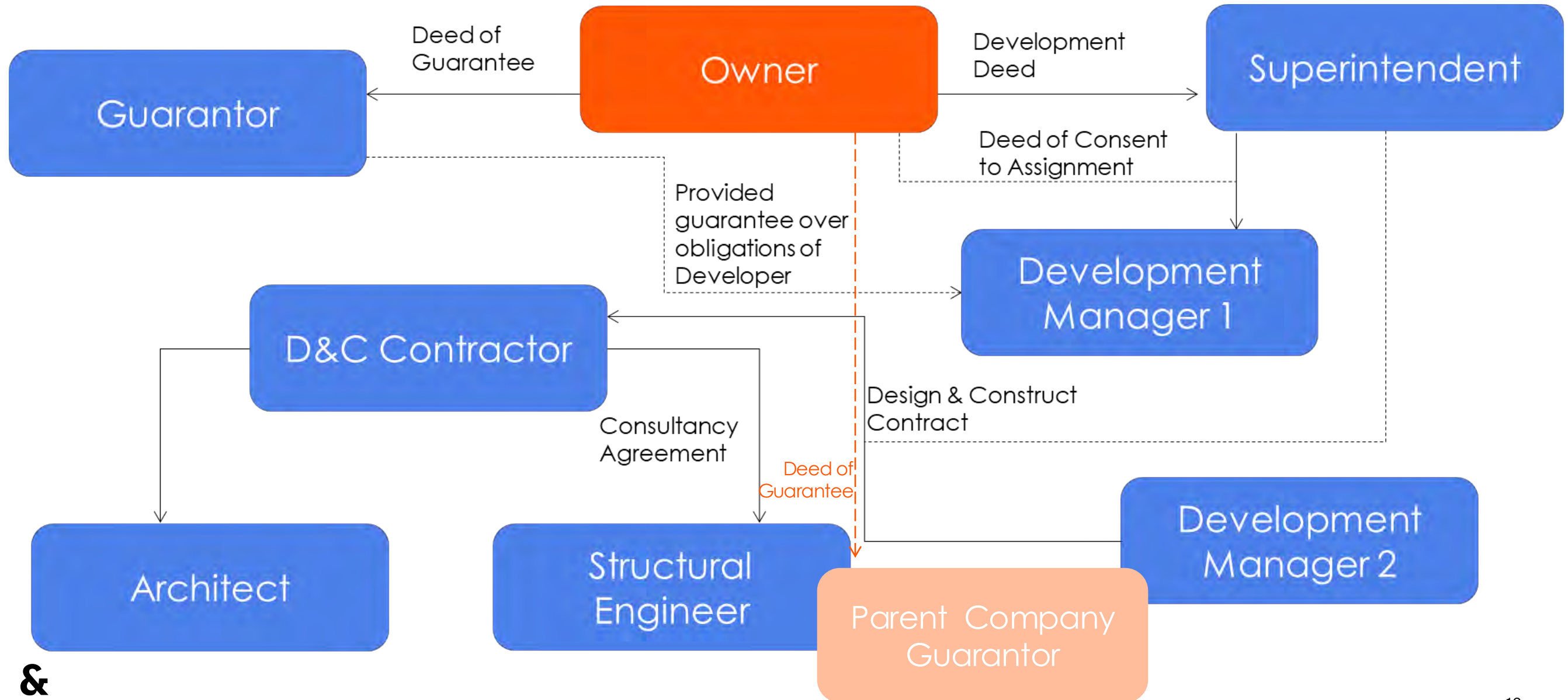
CONTRACT TIPS

COMPLEX CONTRACT – EXAMPLE 1



CONTRACT TIPS

COMPLEX CONTRACT – EXAMPLE 2



CONTRACT TIPS

Red Flags - Summary

- Contract or Deed (6 year v 12 year obligations)
- **Scope**
- Limitations/Caps on Liability (beware the carve out!)
- Indemnities (including for Subcontractor's Work)
- Proportionate Liability
- **Warranties (Incl. Fitness for Purpose)**
- Insurance Requirements
- Dispute Resolution



SCOPE & RETURN BRIEFS



SCOPE & RETURN BRIEFS

Scope Risks

- Clear scope inclusions
- Clear scope exclusions
- Coordination obligations!
- Inspection obligations (qualitative v quantitative)
- Level of detail in drawings
- Beware scope creep

Return Brief

- Ensures “responsive design”
- Importance increases as detail of “client brief” decreases
- Opportunity to demonstrate/clarify understanding of client needs
- Opportunity to share “vision” or suggest improvements (including engaging additional consultants)

FITNESS FOR PURPOSE



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& ROGERS

FITNESS FOR PURPOSE

D&C Contract Fitness for Purpose Example (Design Obligations)

- a) *The Contractor warrants that it has checked and carefully considered the Scope of Works and Technical Criteria and that it is proper, adequate and fit for its intended purpose including for the purpose of enabling the Contractor to carry out the Contractor's Works in accordance with this deed including so as to satisfy the other requirements of this clause 8.1.*
- b) *The Contractor warrants that the design of the Project Works and the Temporary Works will:*
 - i. satisfy the requirements of the [Scope of Works](#) and [Technical Criteria](#), the [Company Brief](#) and of [this deed](#); and*
 - ii. be and will remain at all relevant times fit for their intended purposes; and*
 - iii. be completed in accordance with the requirements of this deed.*
- c) *The Contractor warrants that construction in accordance with the design of the Project Works and the Temporary Works will satisfy the requirements of the Scope of Works and Technical Criteria, the Company Brief and the other requirements of this deed;*
- d) *The Contractor warrants that the Project Works and Temporary Works will:*
 - i. upon Completion, be fit for their intended purposes; and*
 - ii. remain at all relevant times fit for their intended purposes.*
- e) *The Company Brief is provided by the Trustee and nothing in this deed makes the Contractor responsible for the content of the Company Brief but nothing in this subparagraph (e) relieves the Contractor from any other responsibility it otherwise has, including compliance with the Scope of Works and Technical Criteria.*

Insurance Considerations - Exclusions

Guarantees, Warrantees and Commercial Risks

This Policy does not provide indemnity in respect of any Claim, Defence Costs, Inquiry or other cover by this Policy in connection with or arising out of or attributable to:

(a) any liability assumed by the Insured under any expressed guarantee or warranty, but shall not apply to liability:

...

(ii) which would have attached to the Insured in the absence of such expressed guarantee or warranty;

(iv) covered under clause 5 - Fitness for purpose, under this Policy ...

FITNESS FOR PURPOSE

Insurance Considerations – Extensions (Write Backs)

The Insurers will also pay on behalf of the Insured for the following:

Breach of Contract

Loss which the Insured becomes legally liable to pay as a result of a Claim made against the Insured for breach (or alleged breach) of any contract (which is not wilful).

Fitness for Purpose

Loss which the Insured becomes legally liable to pay as a result of a Claim arising out of any:

(a) implied fitness for purpose; or

(b) express contractual acceptance of fitness for intended purpose or fitness for purpose in respect of a design and/or specification of the Works provided always under this clause 5:

- a. the Contract defines the intended purpose of the use of the Works,*
- b. Insurer's liability hereunder shall be limited to that which would have existed had the Contract contained the provision that it shall be a defence to any claim brought against the Insured arising out of the design and/or specification that such is in accordance with practice conventionally accepted as appropriate at the time of the execution of the Works having regard to the size, scope and complexity of the project.*

Key Takeaways



Know the project technical requirements

Clarify performance expectations

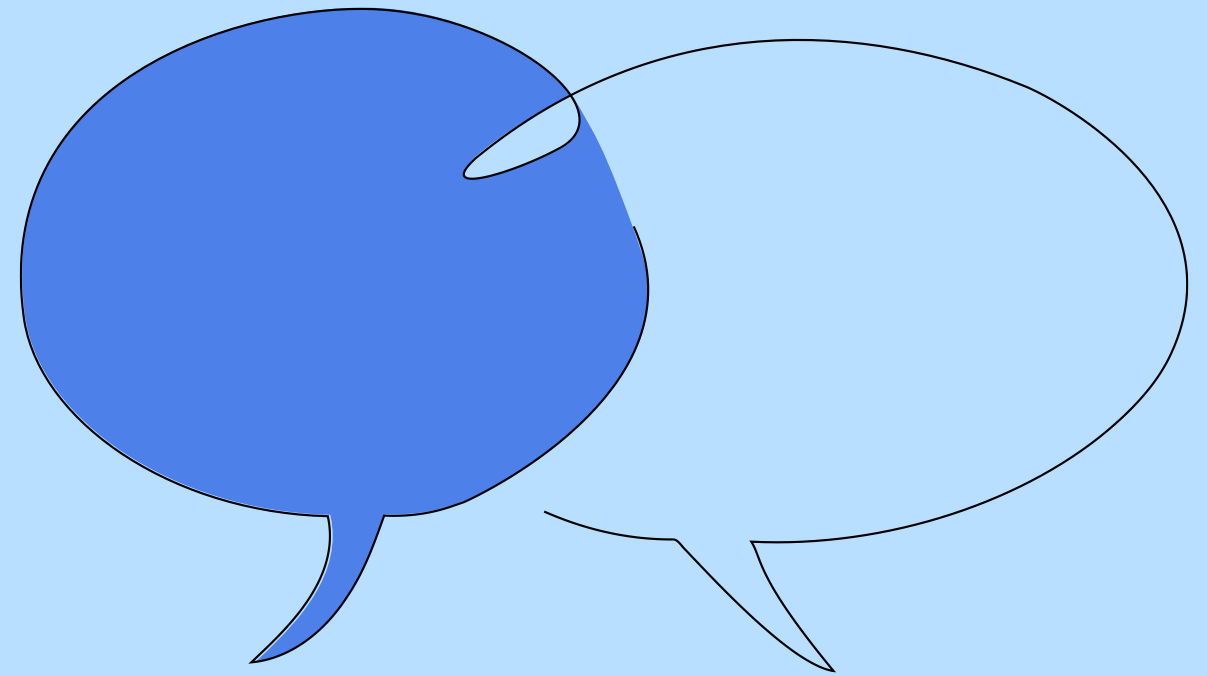
Check your policy (beware the exclusions!)

Is the purpose clear and is it likely to change?

Do downstream fitness for purpose obligations match upstream obligations?

Differences at law between contractor and consultants on fitness for purpose?

**QUESTIONS OR
COMMENTS?**



THANK YOU

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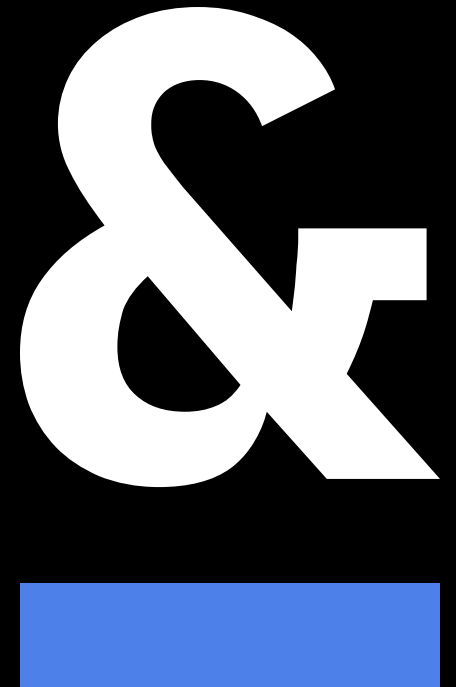
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Global Economic and Market Update:

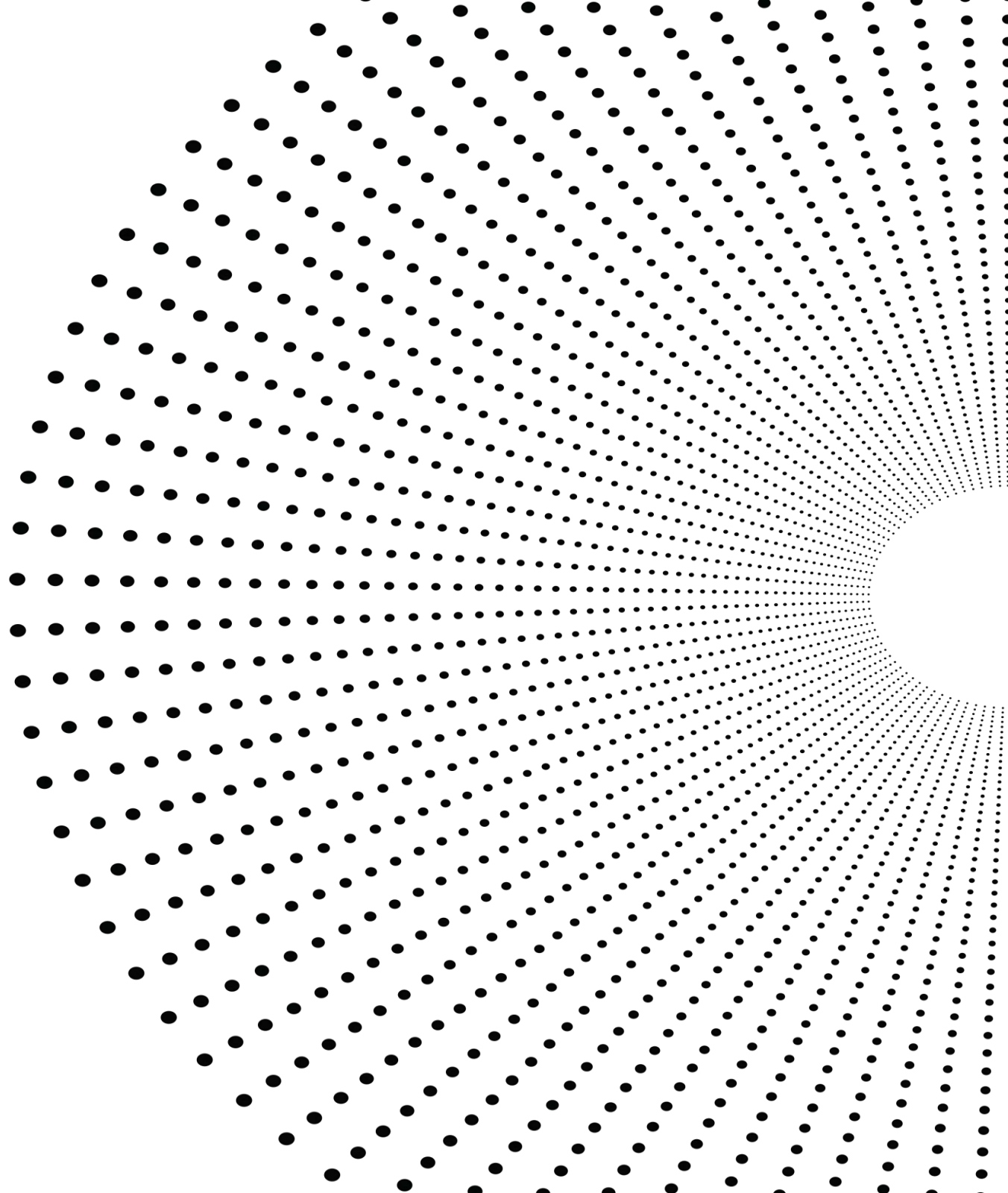
The monetary tide turns

Danny Chung

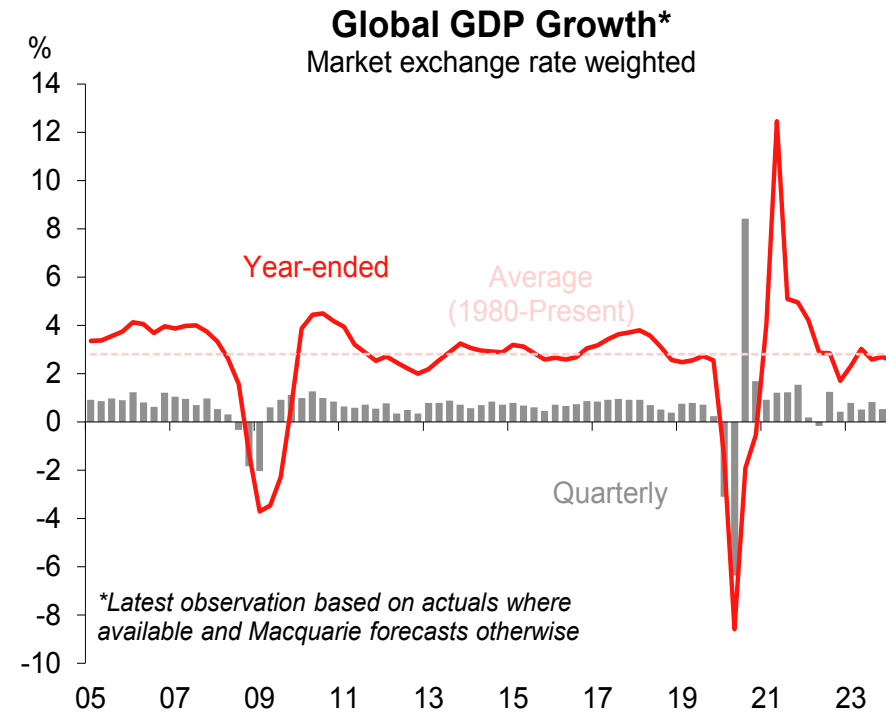
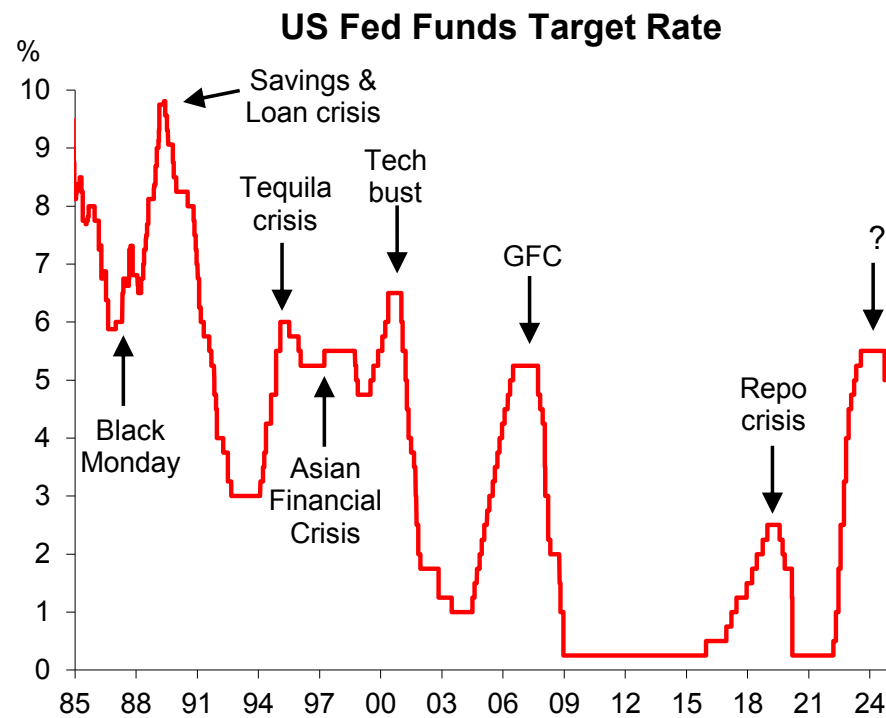
Macquarie Group

One Elizabeth Street, Sydney, Australia

September 2024

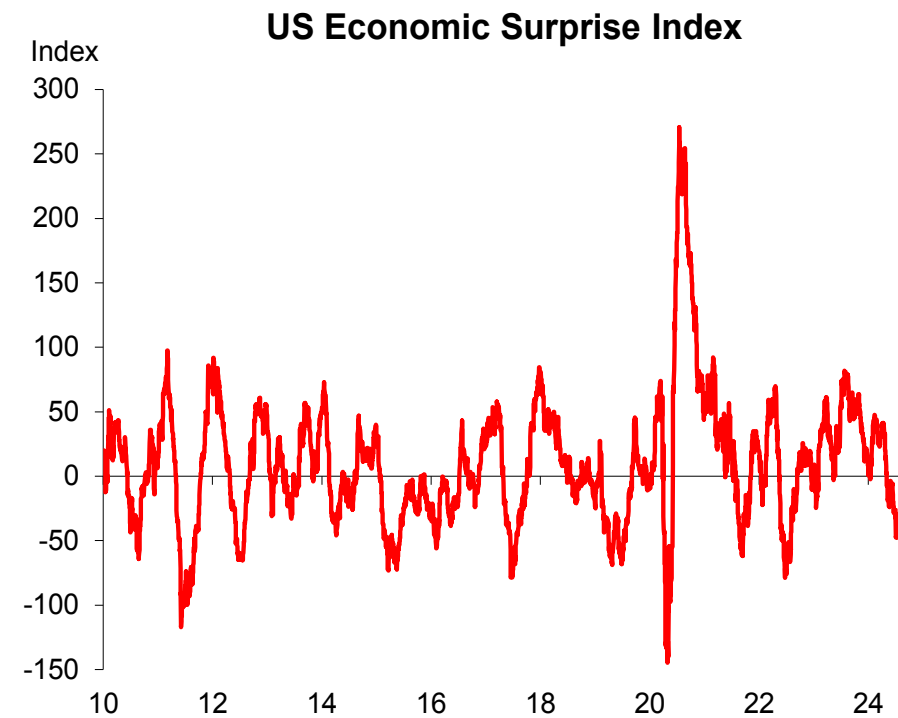
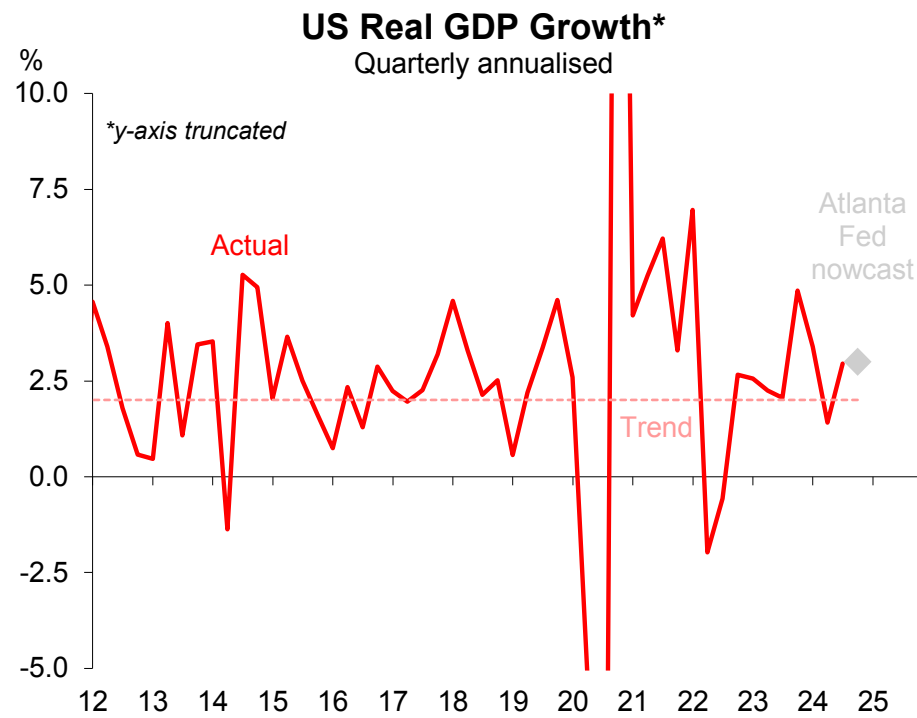


The advanced economy central banks increased interest rates substantially over 2022 and the first half of 2023. Growth stalled in many economies but was okay at a global level.



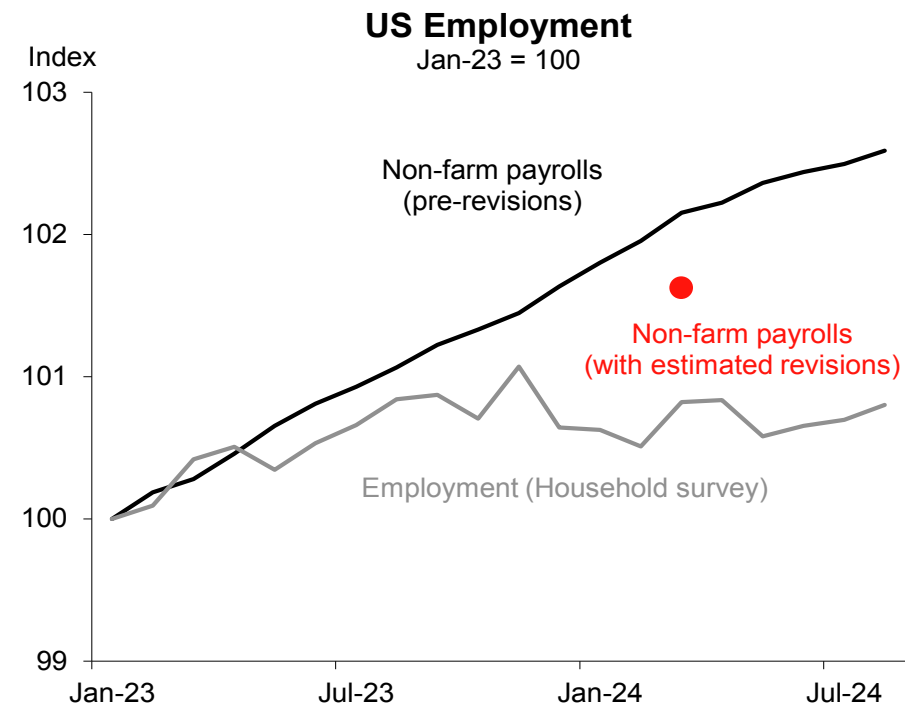
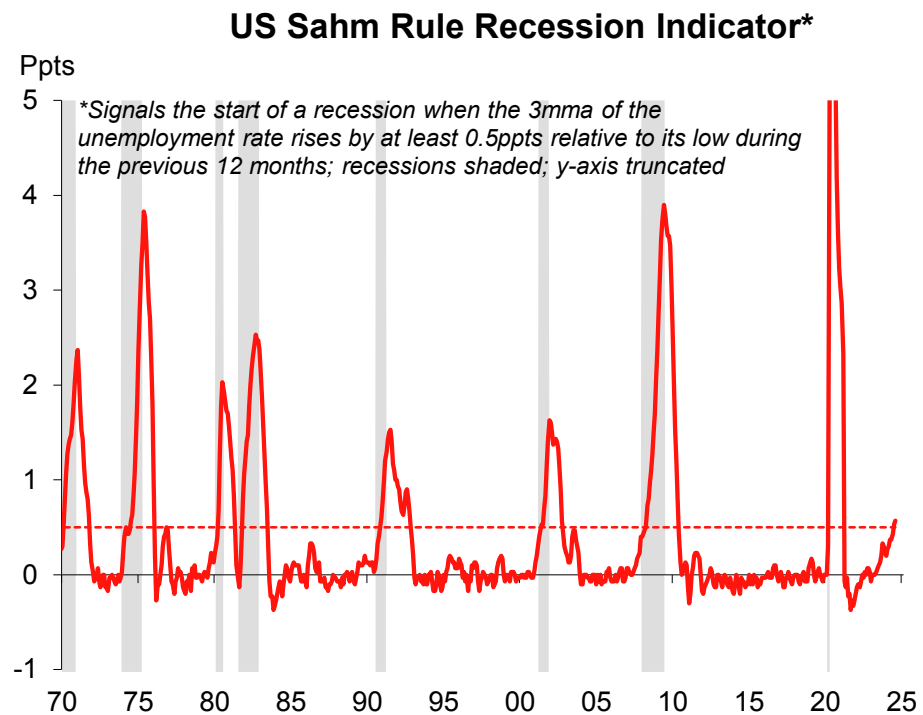
Source: National sources, Bloomberg, Macrobond, Macquarie

In the US, despite ~3% saar growth in Q3, talk of recession risk has intensified amid weaker-than-expected incoming data.



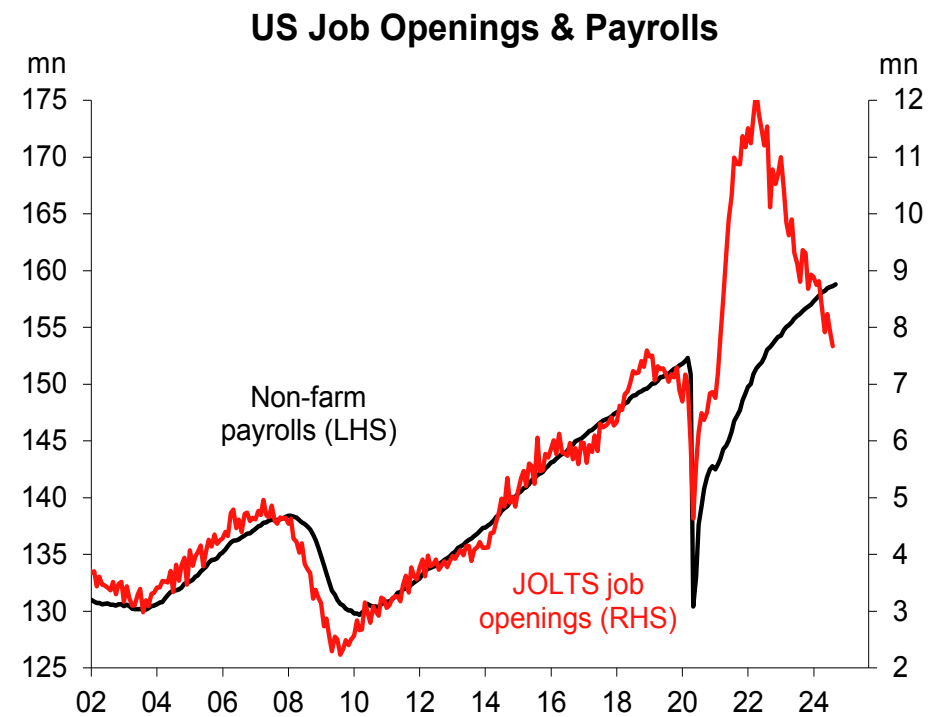
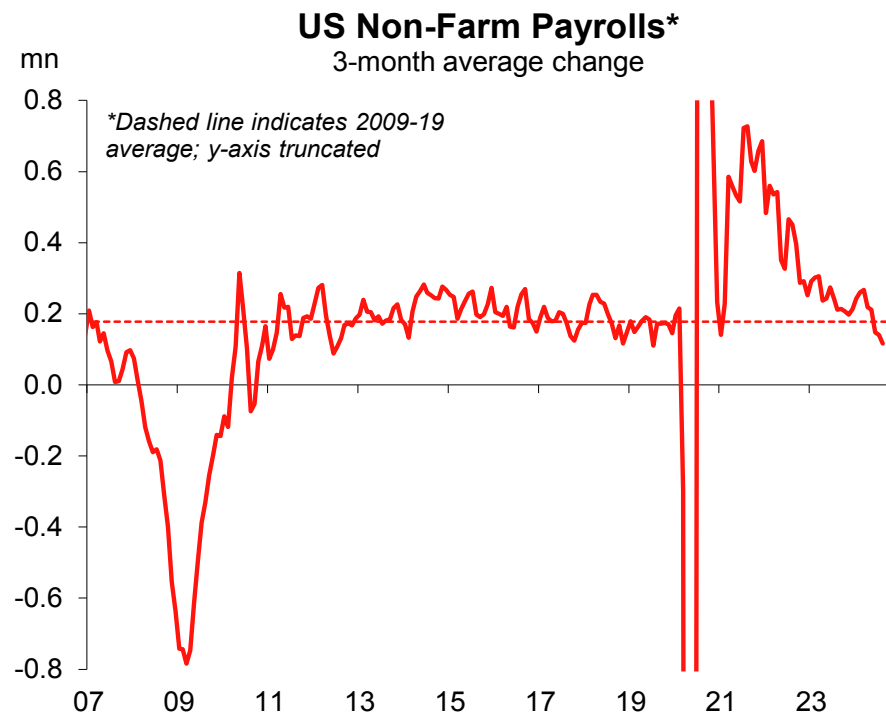
Source: FRB Atlanta, BEA, Citi, Macrobond, Macquarie

The main concern has been the increase in the unemployment rate, which triggered the “Sahm Rule” recession indicator. However, the surveys have diverged, illustrating the uncertainty.



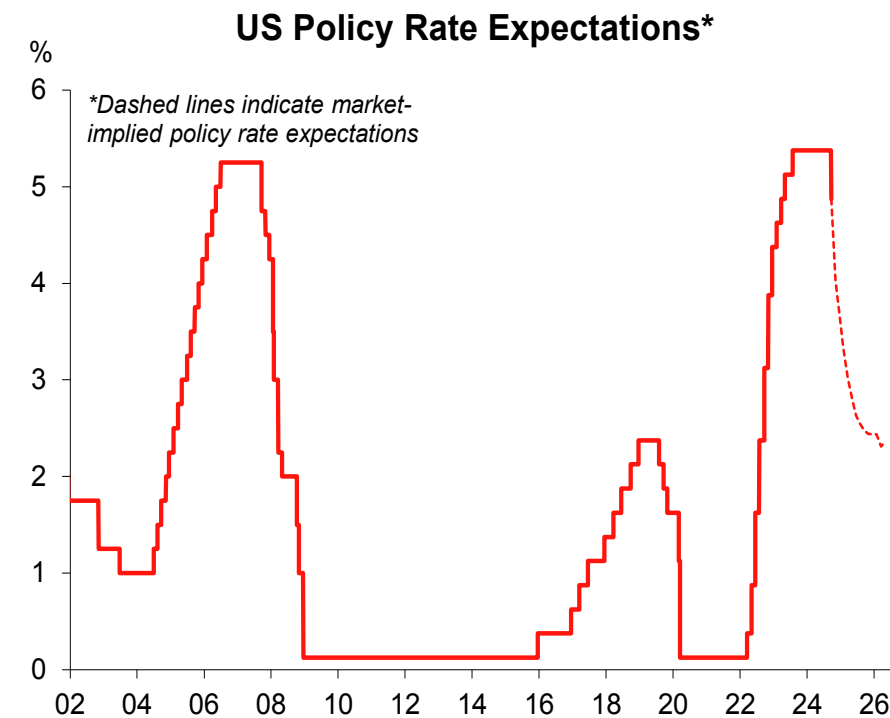
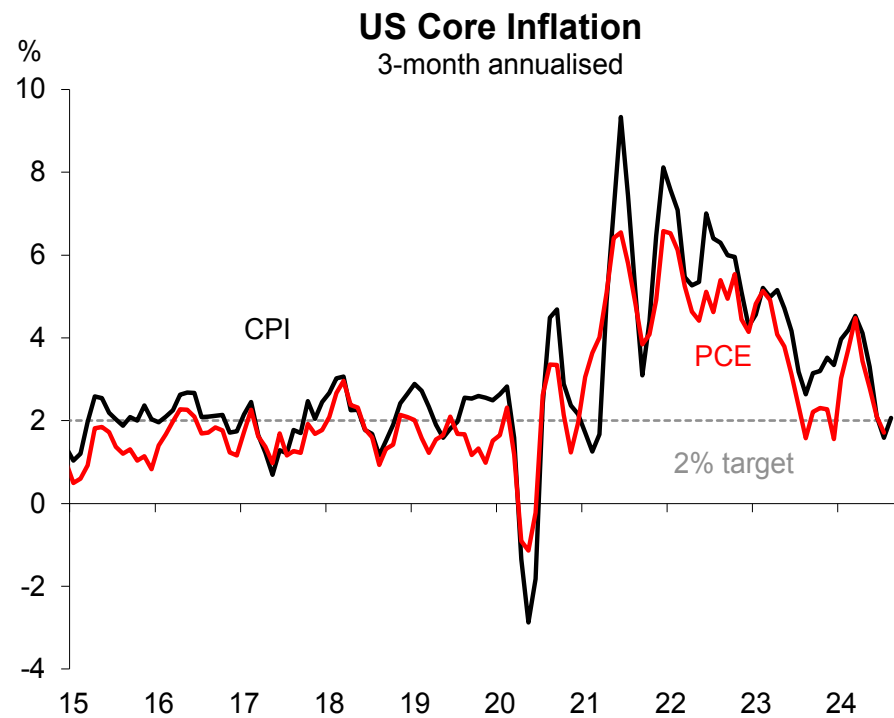
Source: BLS, Macrobond, Macquarie

Looking through the volatility, it does look like the US labour market is slowing.
 The key question is whether it will now overshoot to the downside?



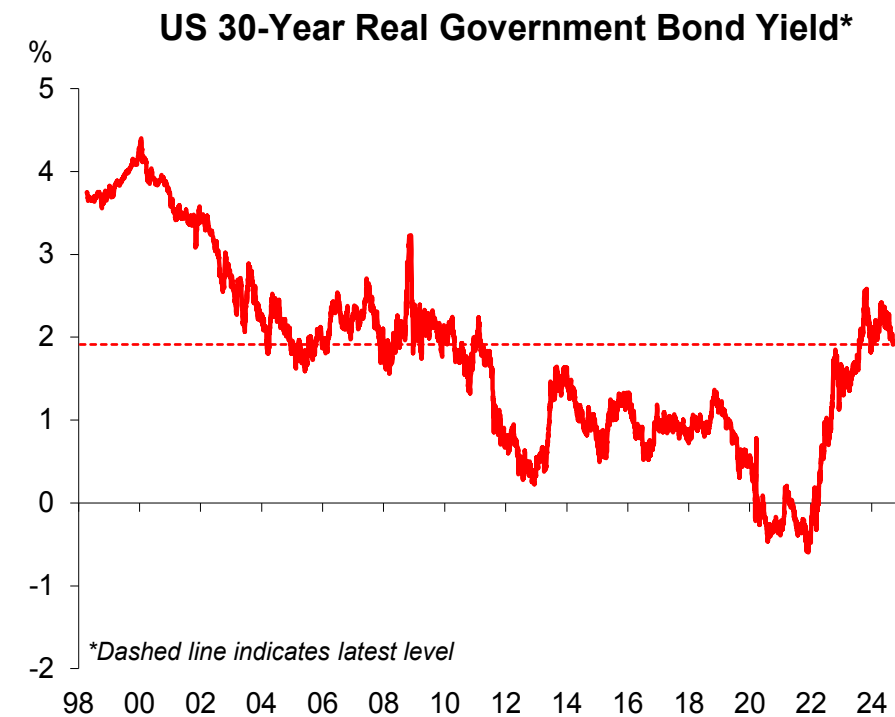
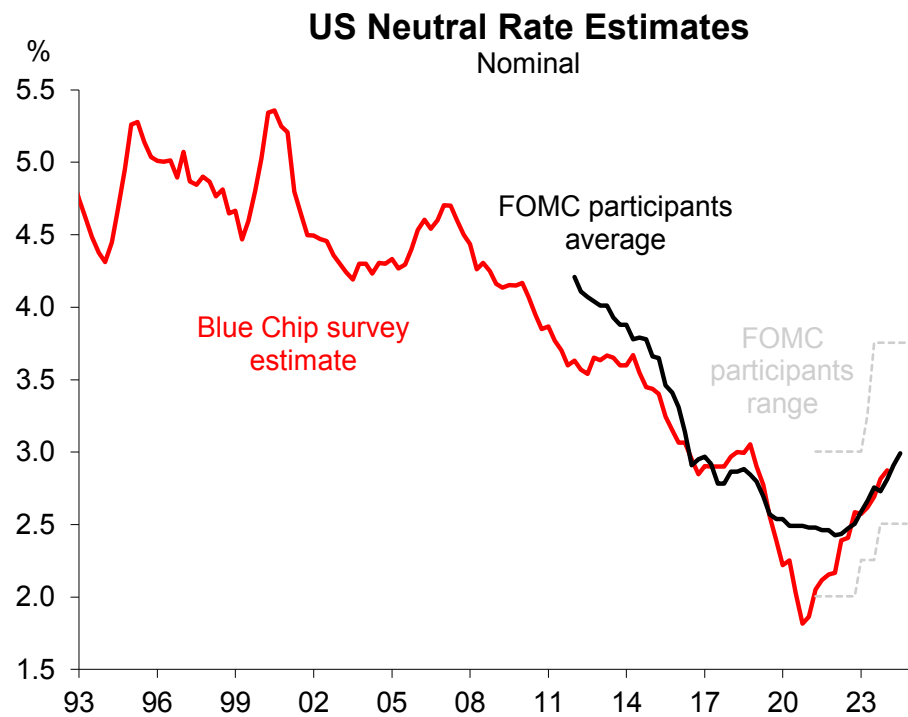
Source: BLS, BEA, Macrobond, Macquarie

With inflation back around 2% the Fed has ample room to aggressively ease if growth slows further, significantly reducing the odds of recession. The first step will be to get back the “neutral”.



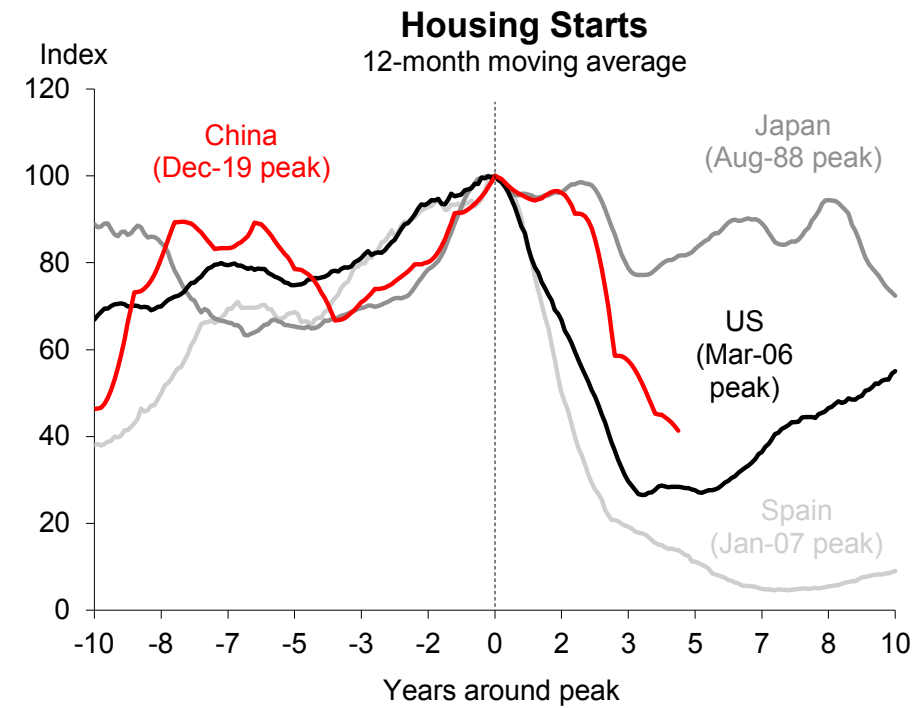
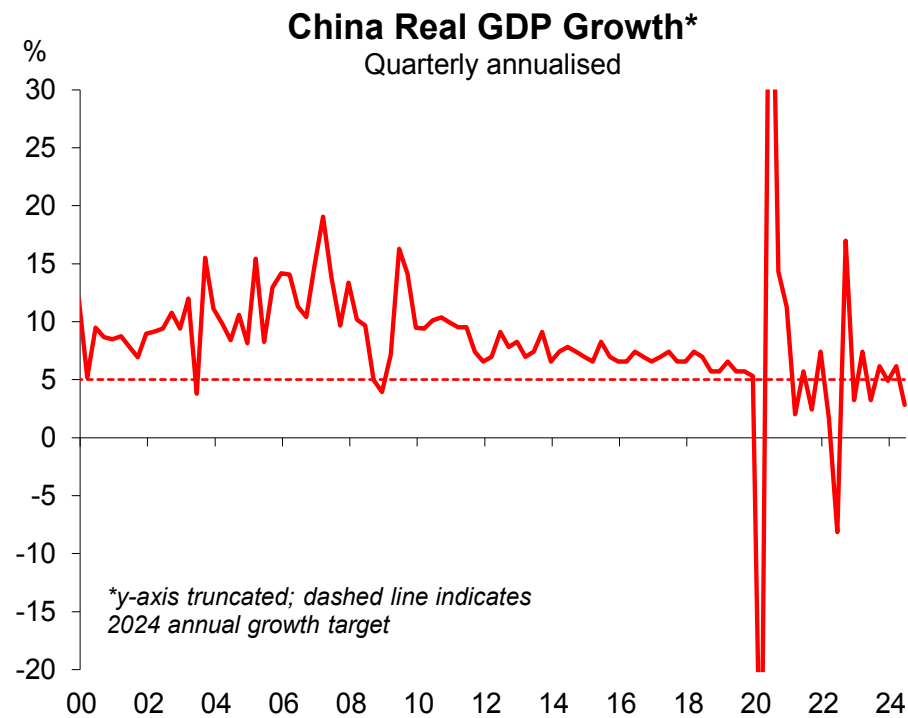
Source: BLS, BEA, Bloomberg, Macrobond, Macquarie

The problem is that we don't really know where "neutral" is. The median of the dots has been revised up to ~3%, however there is a big spread. The 30-year real rate is back in the range seen pre-GFC.



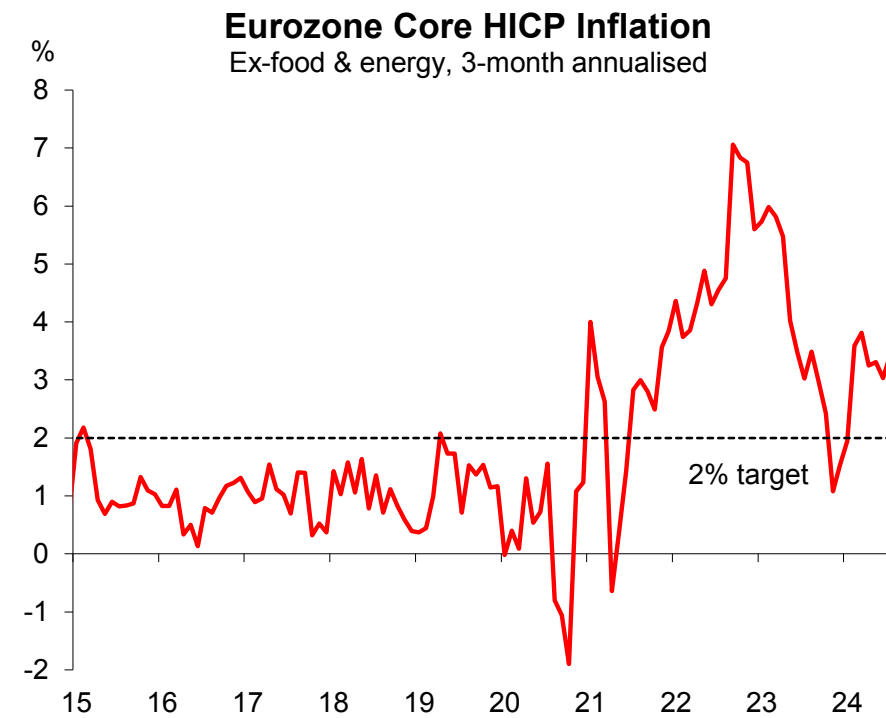
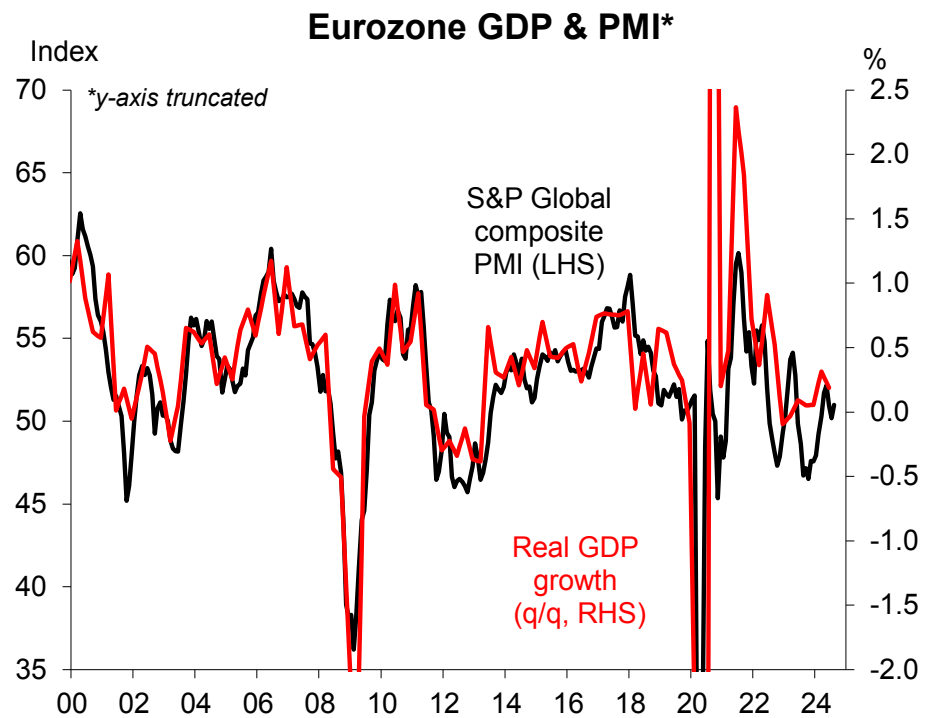
Source: Federal Reserve, Macrobond, Macquarie

Chinese growth remains volatile, with GDP in Q2 very soft as the housing bust continues to weigh.



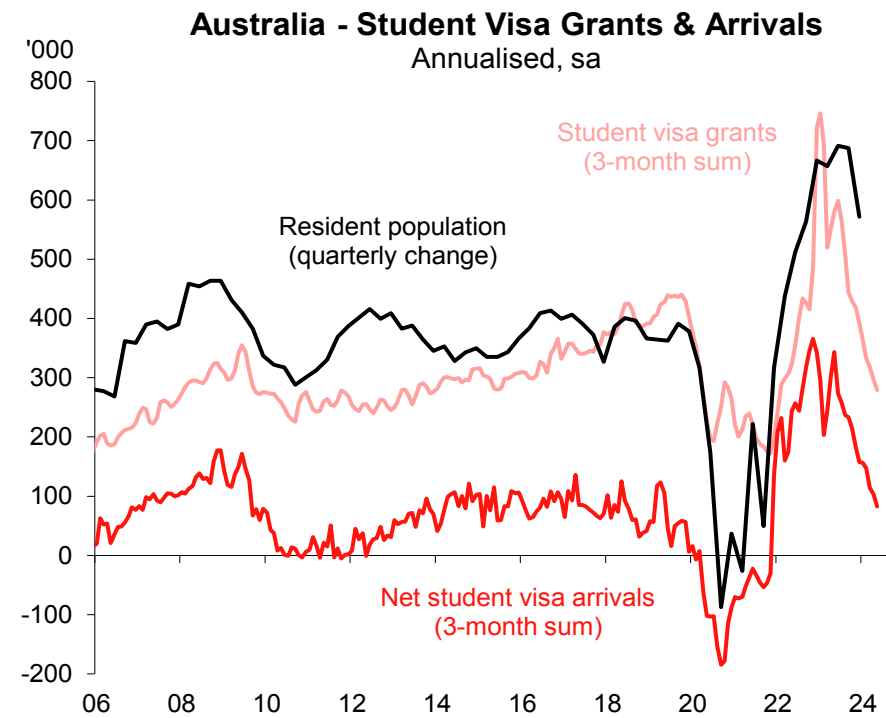
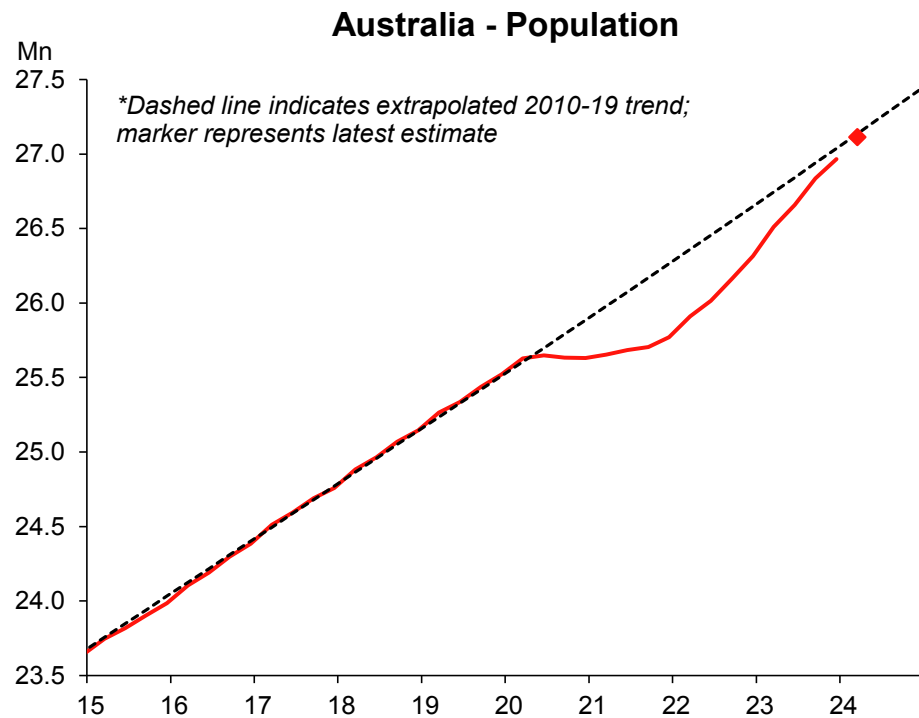
Source: NBS, CEIC, Macrobond, Macquarie

Survey data suggest the Eurozone recovery remains hesitant. The ECB has begun to reduce interest rates, however sticky inflation suggests that they will need to be careful.



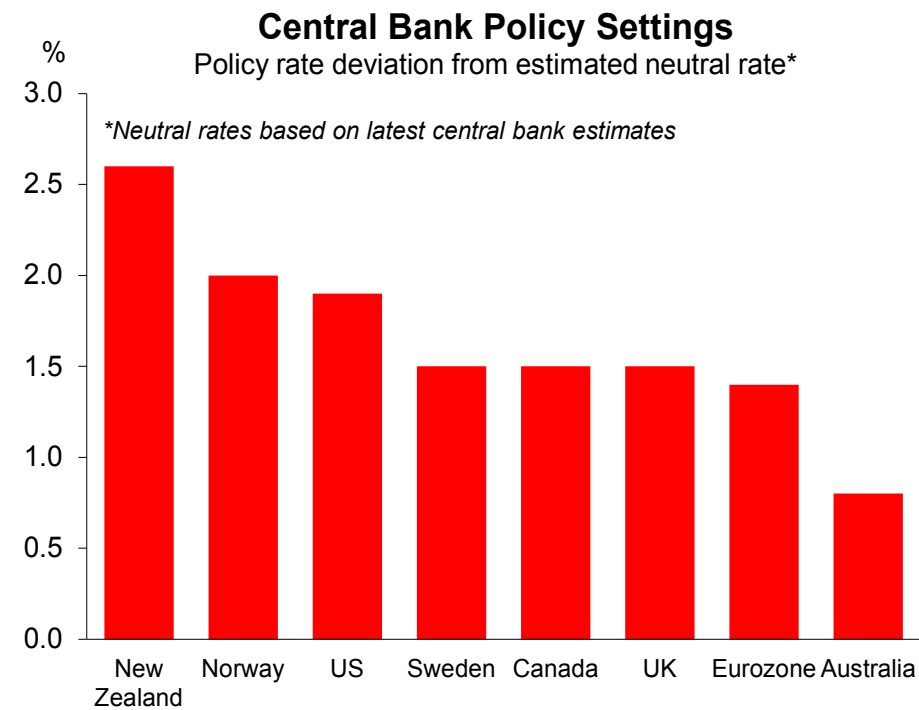
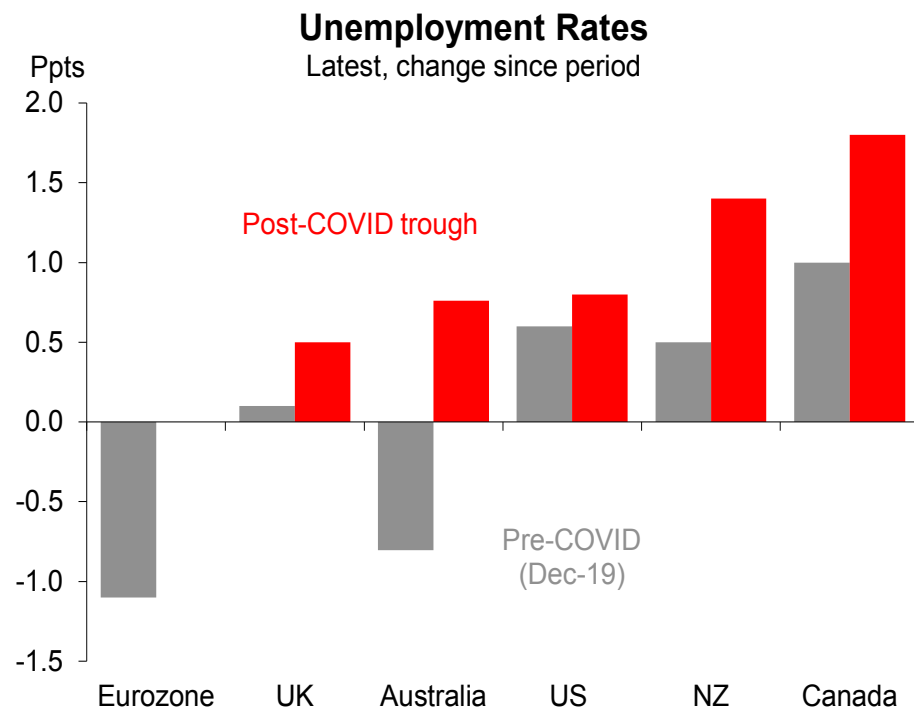
Source: Eurostat, S&P Global, Macrobond, Macquarie

Australia's population has returned to the pre-COVID trend. With the rebound phase over, growth has already slowed back to around its pre-COVID pace.



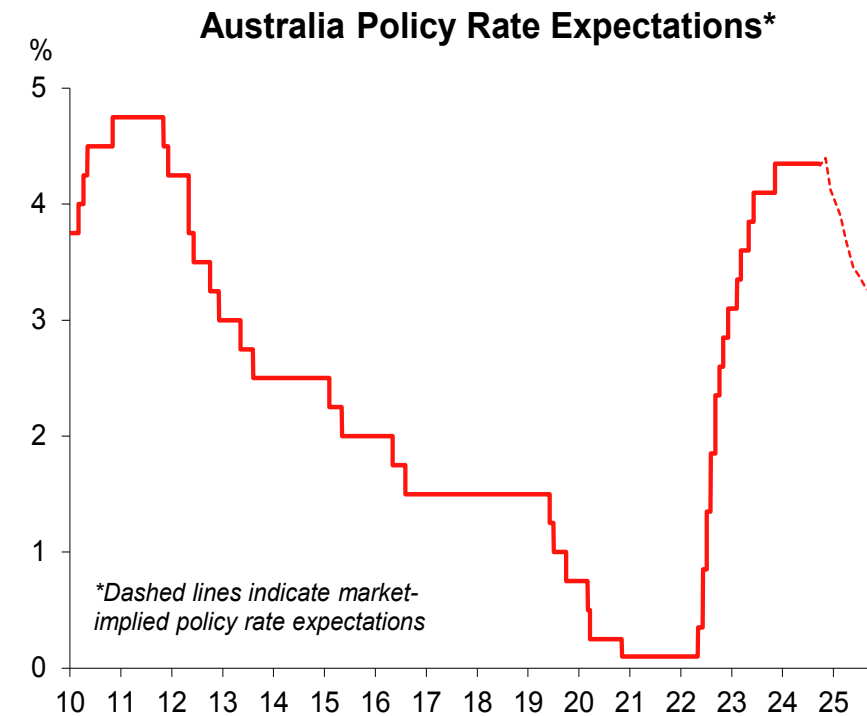
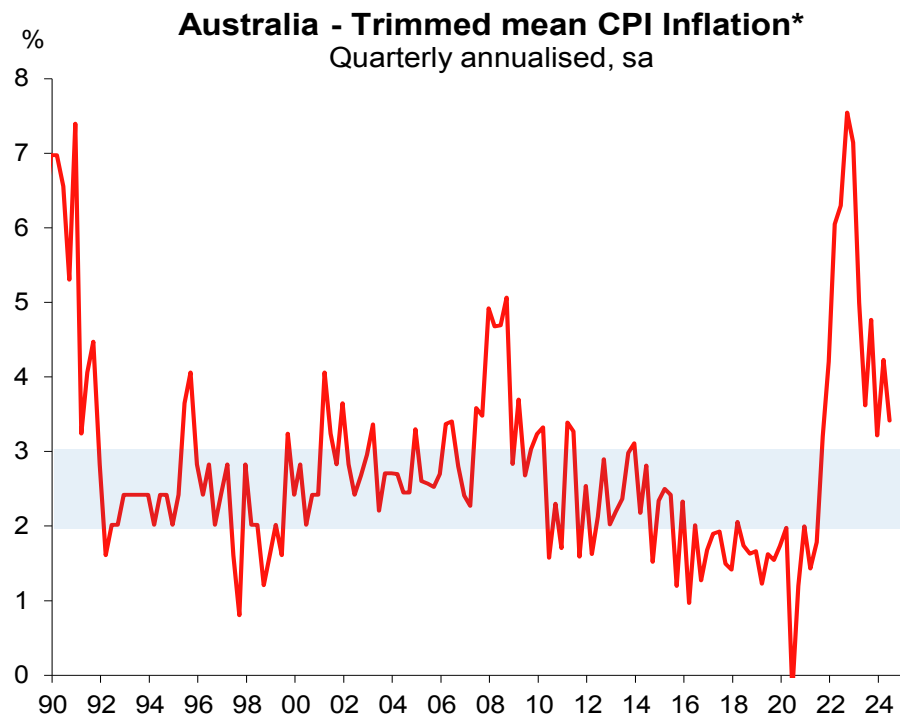
Source: ABS, Department of Home Affairs, Macrobond, Macquarie

Australian unemployment remains well below its pre-COVID level. With RBA policy less restrictive than elsewhere, the RBA will be slower to move than other central banks.



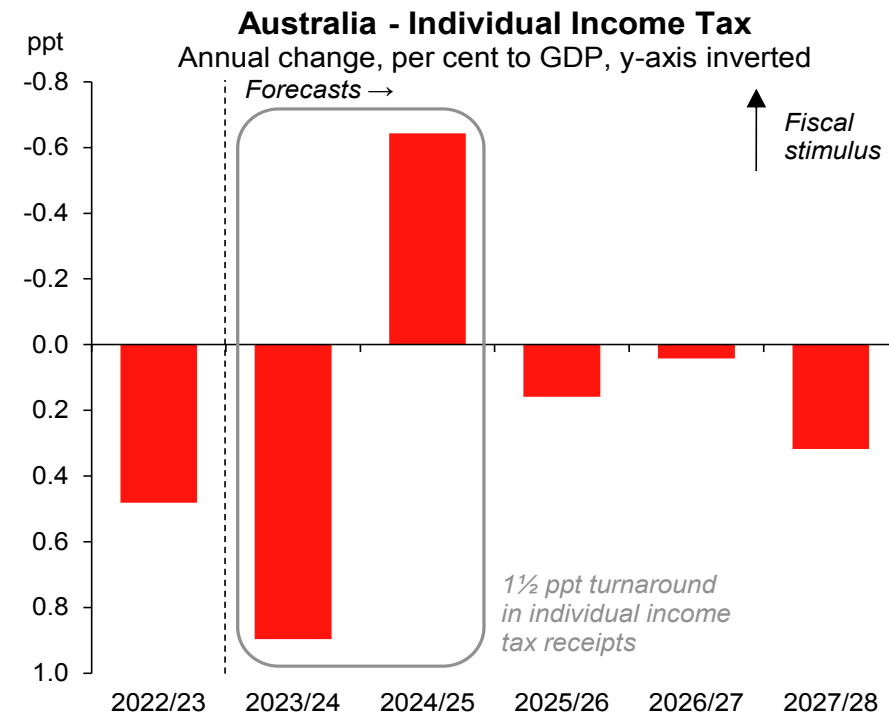
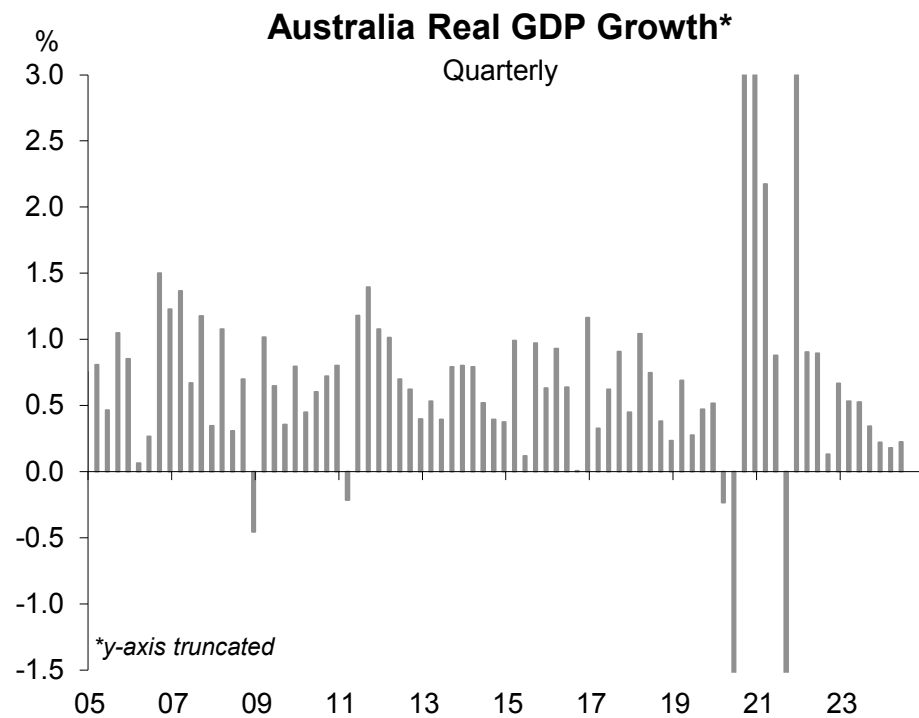
Source: ABS, Macrobond, Macquarie

However, with inflation gradually moving back to the target band, the RBA should begin to cut interest rates early next year.



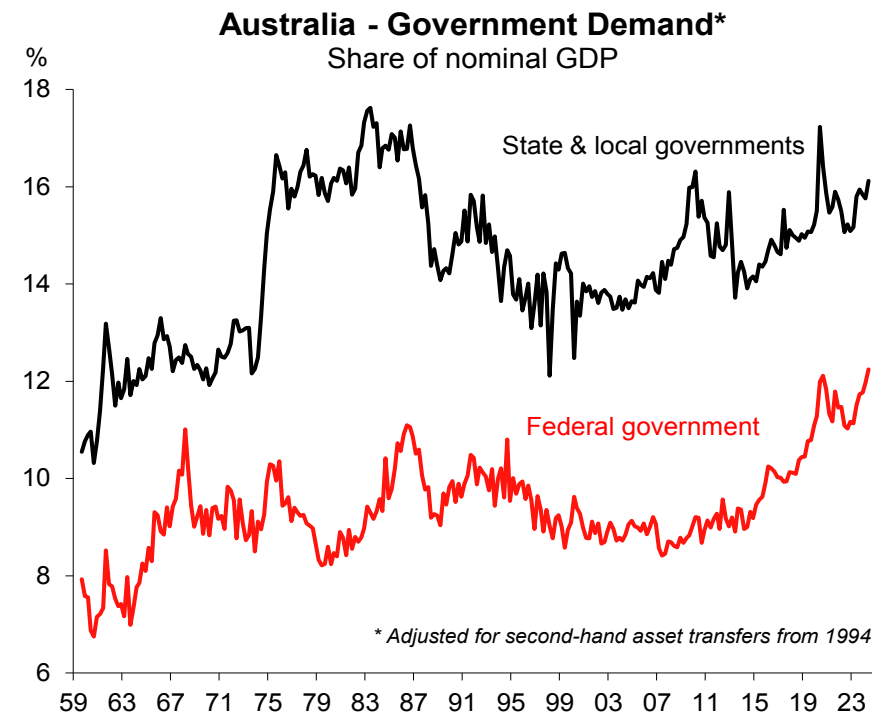
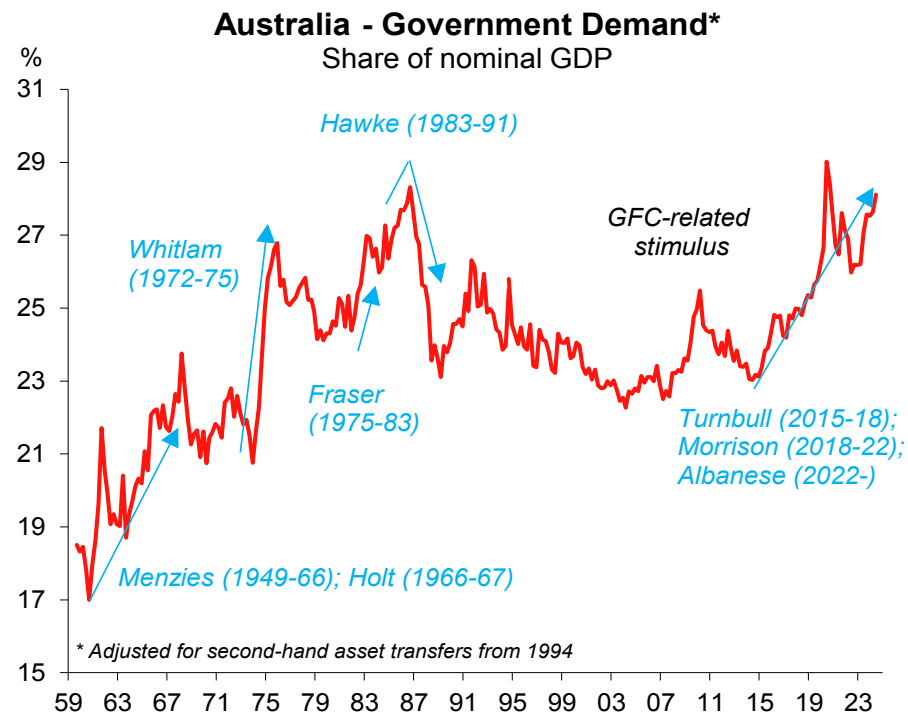
Source: ABS, Bloomberg, Macrobond, Macquarie

Australian GDP growth has stalled, but the combination of tax and interest rate cuts should support a recovery next year.



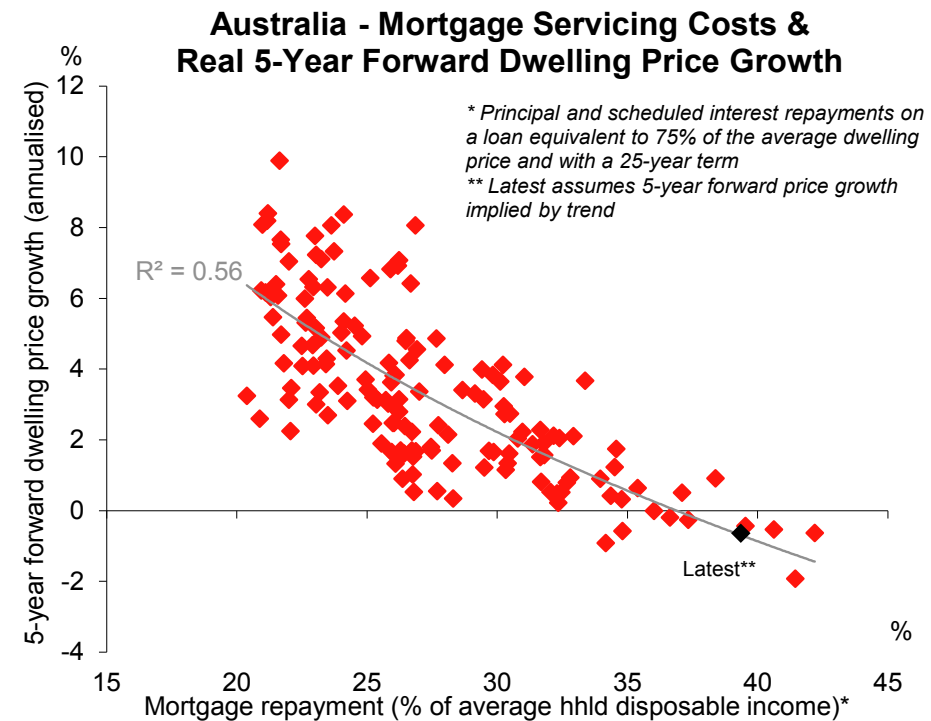
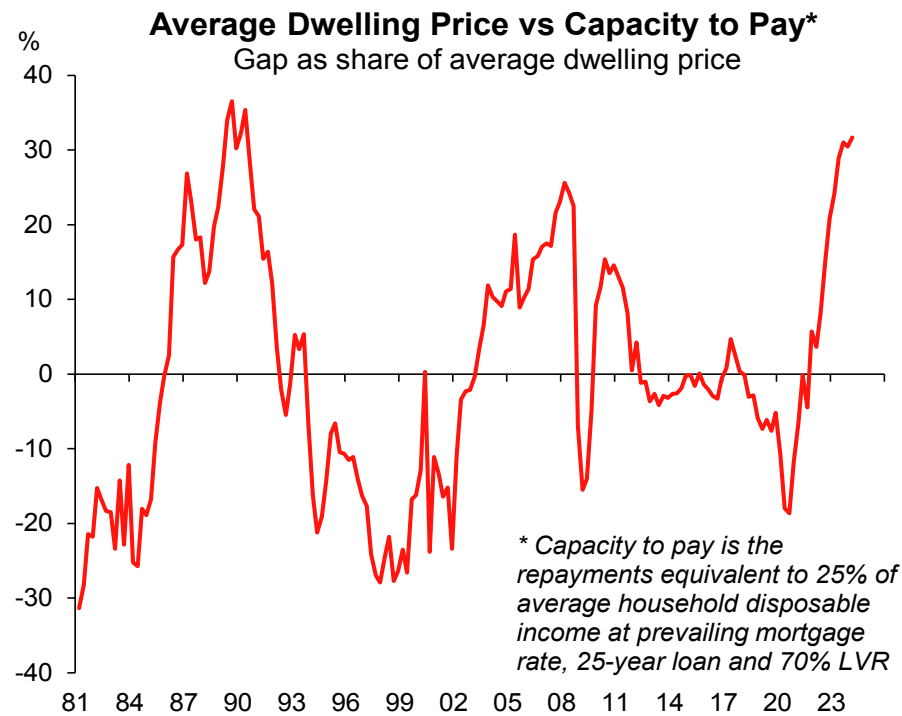
Source: ABS, Commonwealth Treasury, Macrobond, Macquarie

Government spending remains very strong, as the size of government as a share of GDP hits new highs.



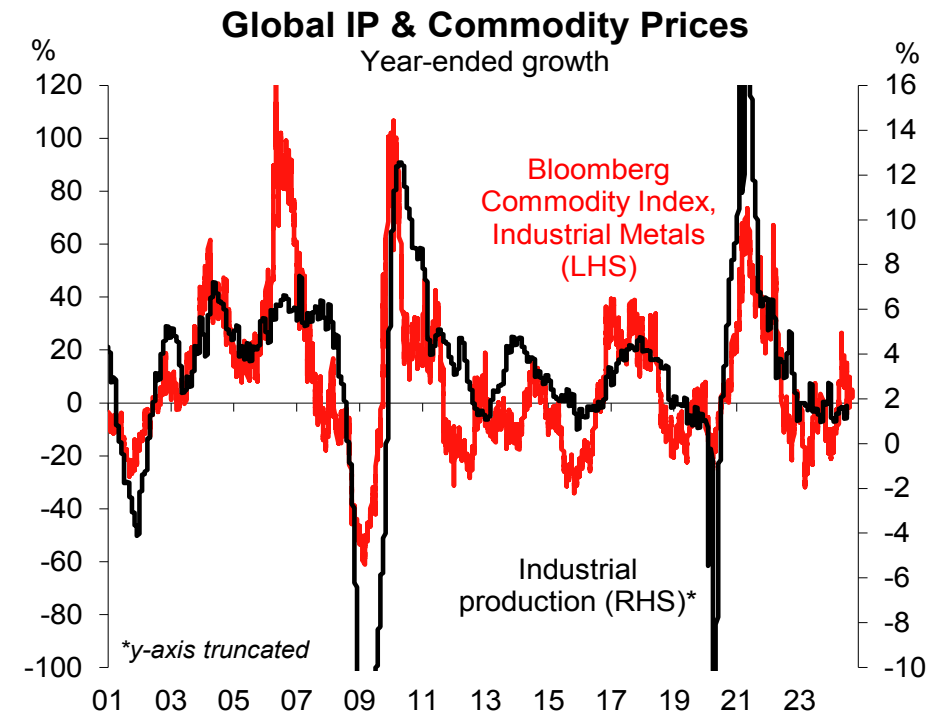
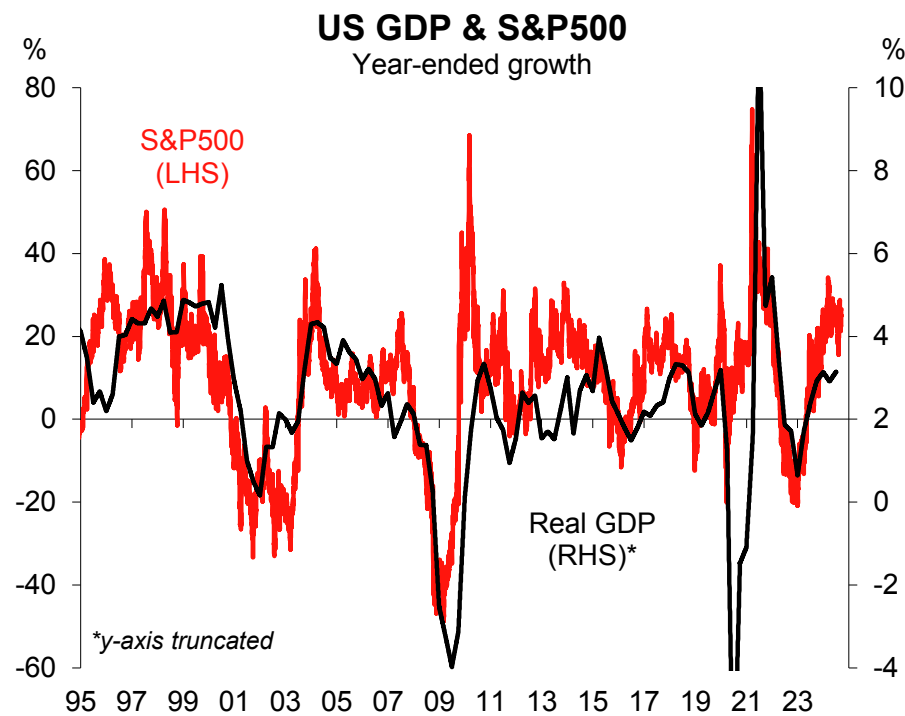
Source: ABS, Macrobond, Macquarie

The gap between Australian dwelling prices and “capacity to pay” is near historical highs. Following similar peaks in '90 and '08 prices stagnated for an extended period.



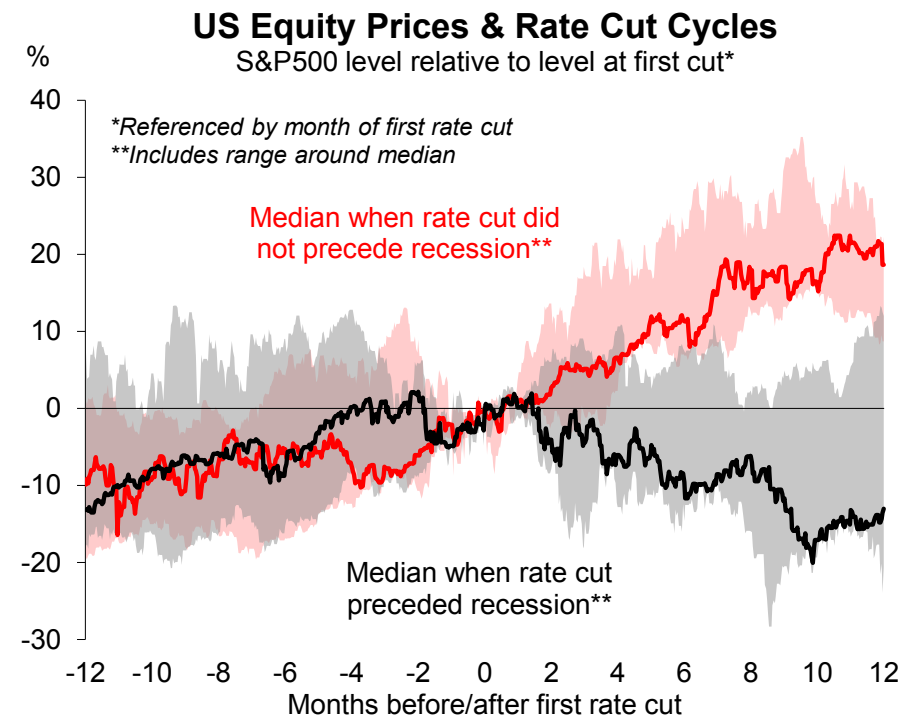
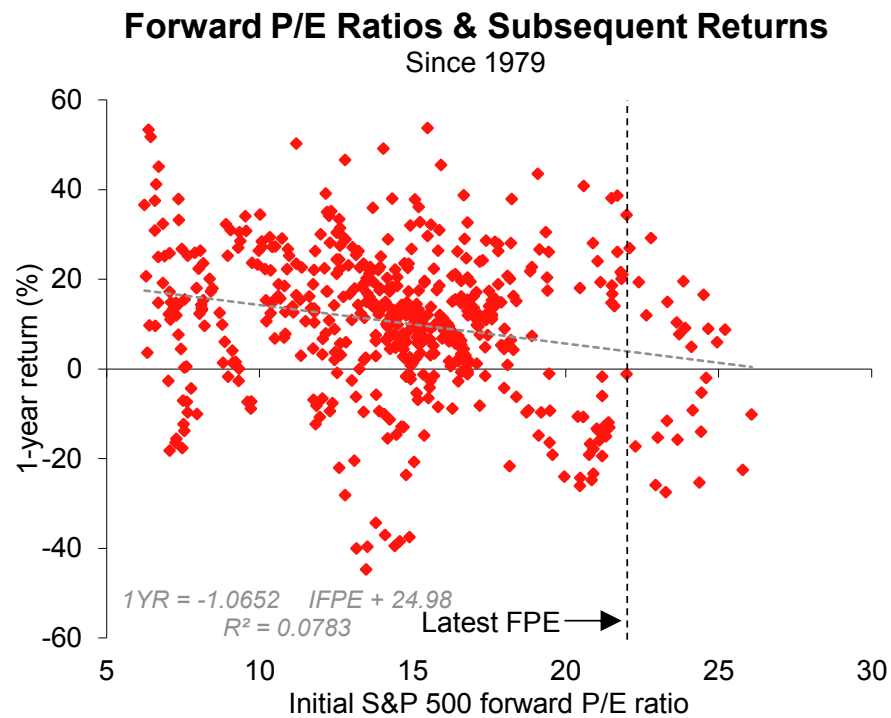
Source: ABS, CoreLogic, RBA, Macrobond, Macquarie

After recent volatility, equity markets are still pricing a strong recovery. In contrast, commodity markets have retraced much of their earlier exuberance.



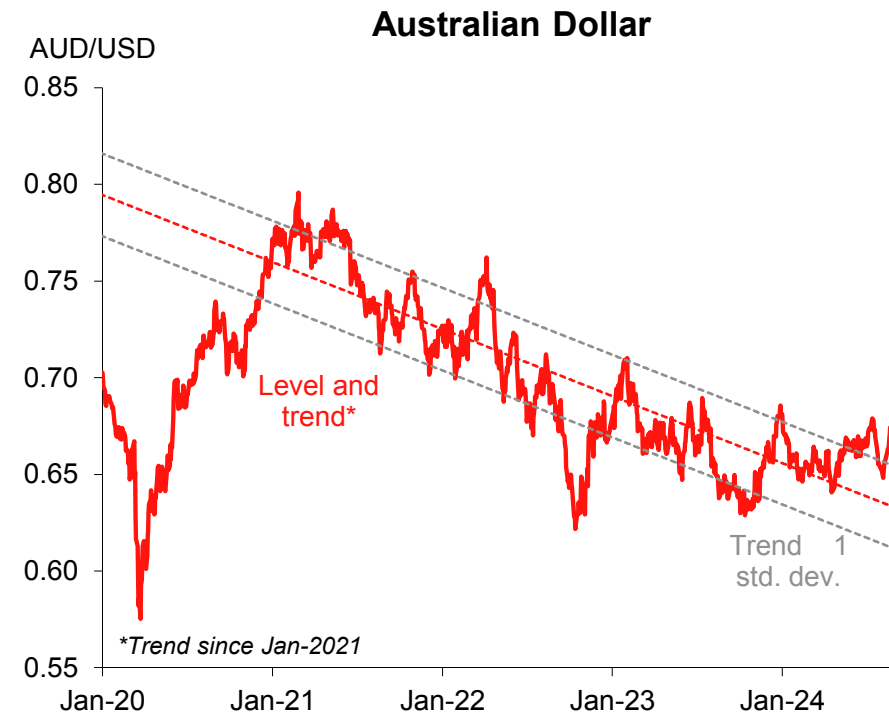
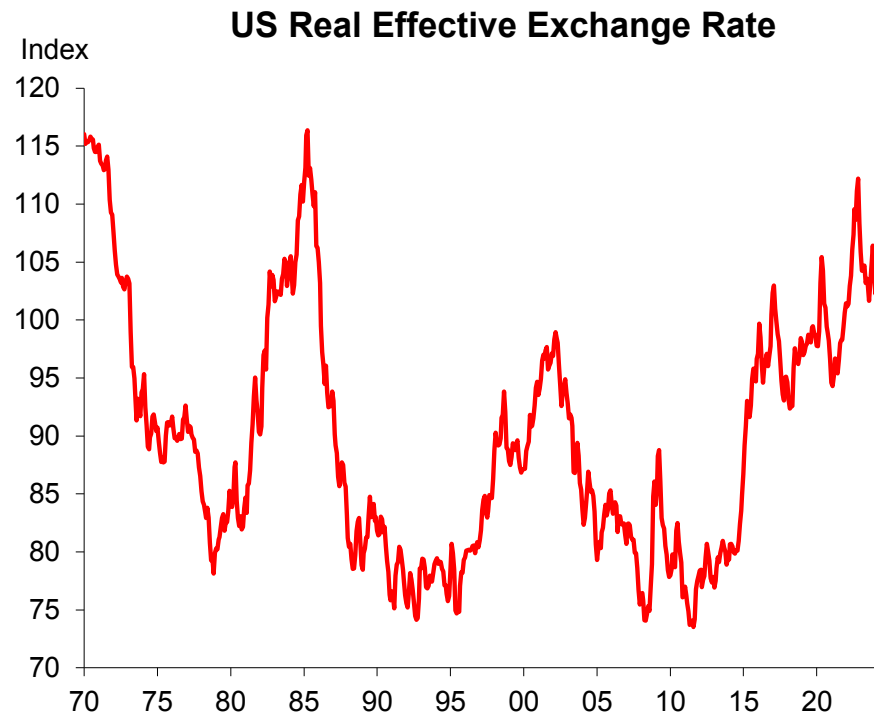
Source: BEA, Bloomberg, Macrobond, Macquarie

The S&P500 is currently back above the trend in place since 2009. History suggests returns in the coming year will depend on whether the Fed can pull off a soft landing.



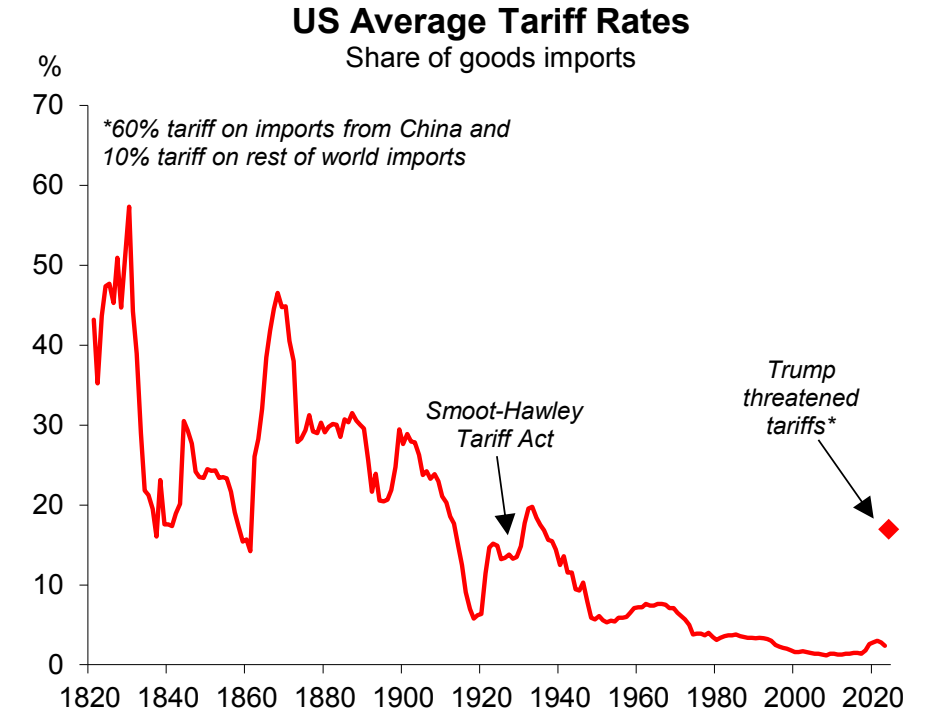
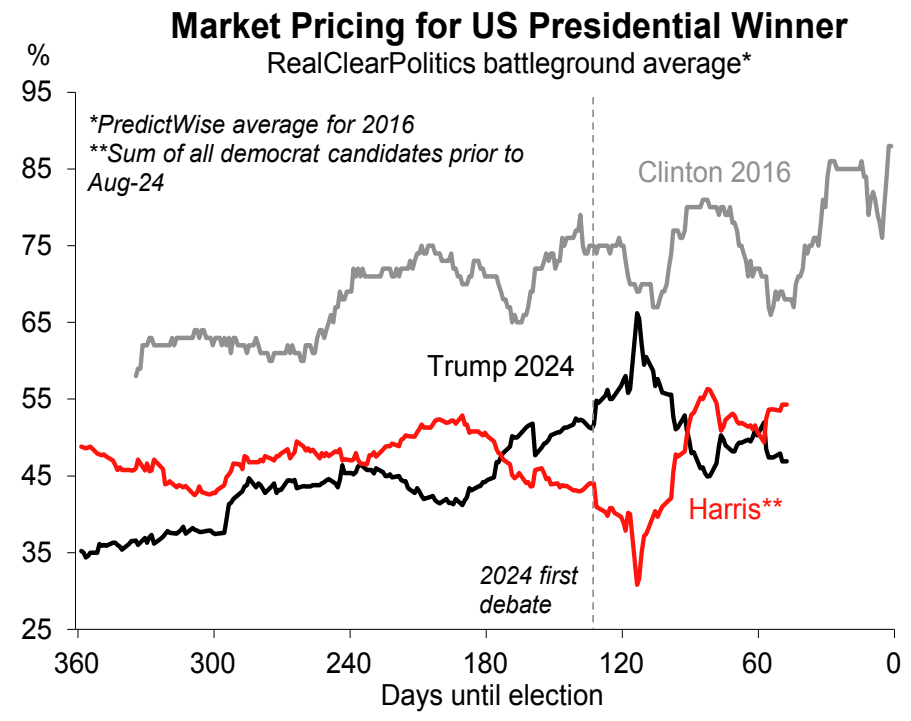
Source: Macrobond, Macquarie

With the Fed about to cut rates, the USD has probably peaked. Similarly, the AUD has probably bottomed for this cycle.



Source: BIS, Macrobond, Macquarie

The US election is the main “known unknown”, with the outcome still too close to call. The Trump tariffs would impart a large shock.



Source: RealClearPolitics, PredictWise, Bloomberg, US International Trade Commission, Macrobond, Macquarie

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