



# IN THE KNOW

**January 2025**

**Quartz Consulting Monthly E-News**

t: 1300 936 223 or e: [info@quartzconsulting.com.au](mailto:info@quartzconsulting.com.au)



## A Message from our Managing Director

As we welcome the start of a new year, I hope you all feel refreshed and ready to embrace the opportunities that lie ahead for 2025. At Quartz Consulting, we remain committed to working alongside our clients to assist them with their IR and HR needs. With a focus on fostering client relationships, we are excited to continue making a positive impact for businesses across Tasmania and Victoria.

This year, Quartz Consulting is proud to welcome Ralph Doedens as our Executive Business Consultant. Ralph brings a wealth of experience and strategic expertise that will be instrumental in driving client success and fostering business growth. His distinguished career has been marked by a deep commitment to enhancing financial performance, customer service, product innovation, process improvement, and identifying growth opportunities. Ralph has extensive Board experience, including six years on the RACT Board. He also volunteers with Crime Stoppers Tasmania, demonstrating his strong commitment to community service.

Please join me in giving Ralph a warm welcome to the Quartz Consulting team.

*Tracey Doedens*

Managing Director



**Ralph Doedens**

## Simplifying Public Holiday Challenges: What Employers Need to Know

The first part of the year can be a great time for employees, but not necessarily for employers, as it brings a number of public holidays. January to April has between 6 and 8 public holidays, depending on whether you have a regional holiday or an entitlement for Easter Tuesday. Rostering and paying employees correctly can be a complicated process. Different rates of



pay and entitlements apply for permanent and casual employees who are requested to work, and some employees will be entitled to a public holiday payment when they are not required to work.

All employees have a right to be absent on a public holiday which means employers must confirm with their employees in advance that they are available and willing to work a public holiday roster.

Employees may also be able to substitute a public holiday if their Award or Enterprise Agreement allows it, and the Australia Day public holiday is an example of where employers could receive this request.

If you have questions relating to public holidays, give one of our Workplace Relations Consultants a call, or contact the office on [1300 936 223](tel:1300936223) or [info@quartzconsulting.com.au](mailto:info@quartzconsulting.com.au)



## Bullying Versus Reasonable Management Action

We often hear about people managers being nervous about addressing performance-related issues with their team members for fear of being accused of bullying. This becomes a challenge for employers as people managers are responsible for providing regular feedback to their team members, especially when areas for improvement are identified.

The Fair Work Commission (FWC) has recently heard two stop-bullying cases submitted by employees against their managers, and in both instances the FWC found that the employee's allegations were not deemed to be bullying, but rather it was **'reasonable management action'**.

In the first case, Deputy President Dean rejected an employee's stop-bullying application, deeming that an email the employee characterised from his manager as *'accusatory'* and *'menacing'* was in fact *'reasonable and appropriate'* and *'clearly not a matter of bullying.'* In addition, every matter relating to time and attendance, work performance and unacceptable conduct that his managers raised with the employee, the Deputy President found that each matter ought to have been raised and were deemed reasonable management actions.

Meagher [2024] FWC 3569 (23 December 2024)

It was held in this decision that his managers were doing their job by raising performance related issues with their team member, and the FWC took the view that the way the conversations were appropriately carried out constituted reasonable management action in the circumstances.



## Bullying Versus Reasonable Management Action (cont.)

In the second case, Commissioner Connolly rejected an employee's bullying allegation against his employer despite there being a number of shortfalls in the employer's practices and complaint handling processes. In his decision, Commissioner Connolly pointed out that *'management actions do not need to be perfect or ideal to be considered reasonable'* provided that they are carried out in a *'reasonable manner.'* Lewis [2025] FWC 29 (7 January 2025)

In this case the FWC recognises that managers may not always get performance management actions 'right'. Rather it is important to ensure a procedurally fair process and apply processes consistently and do so in a reasonable manner.

If you are looking to learn more about having effective performance management conversations, Quartz Consulting are offering workshops in Launceston and Hobart that will equip you with these essential leadership skills.



Don't  
Forget!

## Aged Care Changes

In our November edition we highlighted the changes in the Aged Care Sector that are effective from the first full pay period in January 2025. If you employ aged care workers who are classified under the

Aged Care Award, Nurses Award or the Home Care – Aged Care classification in the SCHADS Award, these changes are likely to affect you.

The SCHADS Award changes to the Home Care – Aged Care classification are noticeably different, with a new Schedule F introduced to provide classification definitions that focus entirely on home care provision to aged care clients. References to administrative work or community-based work have been removed from the definitions.

If you currently employ workers under this SCHADS Home Care -Aged Care classification, we recommend you review the position requirements to determine where and how the support is provided to your aged care clients, and whether or not this classification is still appropriate for the work being performed.





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## SIGNIFICANT RECENT DECISION

### Landmark High Court decision awards \$1.44 million for psychiatric injuries

In a significant decision handed down on 11 December 2024, the High Court has found that employers can be found liable for psychiatric injuries that arise from contract breaches and poorly conducted disciplinary and termination processes. See *Elisha v Vision Australia* [2024] HCA 50 (11 December 2024).

#### Contract breaches

Vision Australia (Vision) issued a contract of employment to their employee (Mr Elisha) that contained a clause which stated Mr Elisha's employment would be in accordance with the Vision's policies and procedures.

Incorporating the Disciplinary Procedure as a term of the contract created a legally binding agreement between Vision and Mr Elisha which requires both parties to adhere to the Disciplinary Procedure. Vision was found by both the Supreme Court of Victoria and the High Court to have breached their contractual obligations.

#### Poorly conducted disciplinary / termination processes

Vision commenced disciplinary proceedings against Mr Elisha in May 2015, which resulted in his dismissal for serious misconduct. Vision based their decision to terminate on previous allegations of aggressive behaviour shown by Mr Elisha, however these allegations were not put to Mr Elisha for response either as part of the letter of allegation, during the disciplinary meetings or the 'show cause' process. Vision breached their own Disciplinary Procedures with their actions.

The primary judge characterised Vision's disciplinary process as ***"a sham and a disgrace"*** and held that Vision breached their 2015 Disciplinary Procedure, which was incorporated into Mr Elisha's employment contract, by failing to provide Mr Elisha with a letter containing the allegations upon which Vision ultimately acted in terminating his employment. [1]

## SIGNIFICANT RECENT DECISION

Mr Elisha commenced unfair dismissal proceedings with the Fair Work Commission and was awarded damages. He was diagnosed with a significant depressive disorder as a result of the termination.

### **The claim for psychiatric injury**

In 2020, Mr Elisha commenced his claim for psychiatric injury caused by Vision breaching the terms of his contract by not following documented processes during the disciplinary procedures.

In 2023, the Supreme Court of Victoria found that Mr Elisha was successful in establishing a breach of contract and Vision failed to comply with their own Disciplinary Procedure. However nominal damages for his psychiatric injury were not awarded under workers' compensation laws.[2]

Mr Elisha lodged an appeal of the decision with the High Court. The High Court found that Mr Elisha was *'able to claim damages for psychiatric injury where the injury arose from the manner of his dismissal'* and *'the psychiatric injury is part of a class of physical or personal injury for which damages are recoverable for breach of contract.'*

The primary judge determined that the liability for the injury was not too remote, given the serious circumstances of Vision's breach and Mr Elisha was awarded \$1.44 million in damages.

This decision highlights the following for Employers:

- In some circumstances, Employers may be held liable for psychiatric injuries to Employees as a result of poor management practices that result in dismissal.
- Use of employment contracts which contain a clause which incorporates the policies and procedures into the contract will lead to employers being required to adhere to those policies as a term of the contract. As an alternative, adherence to the employer's policies and procedures could be incorporated with the Code of Code.

## SIGNIFICANT RECENT DECISION

- Procedurally fair processes are essential during disciplinary proceedings. Employees should be provided with an opportunity to respond to all of the allegations the Employer will rely upon to make a decision regarding dismissal.
- Employers should be mindful of the impact an investigation or termination can have on Employees, and ensure that appropriate employee support is offered throughout if possible.
- Employees should ensure they follow their policies and procedures, just as Employers are expected to.

[1] High Court of Australia, *Elisha v Vision Australia Ltd* [2024] HCA 50, 11 December 2024

[2] *Vison Australia Ltd v Elisha* [No 2] [2023] VSCA 288 (28 November 2023)

