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Quartz Consulting Monthly E-News

April 2026

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A Message from our Managing Director

April is always a busy and reflective month, marked by the Easter break, school holidays, and the commemoration of the 111th anniversary of ANZAC Day. It's a time centred on family, community, and remembrance, and we hope you've been able to pause, reflect, and connect during this significant period.

Here at Quartz Consulting, we've already seen a busy start to the year and this is likely to continue with many enterprise agreements up for renewal and other changes on the horizon for 2026. Continuing the trends of 2026, the Fair Work Commission still appears to be dealing with a busy caseload of both unfair dismissal and general protection claims.

As always, our team at Quartz Consulting is here to support our clients from the increasingly complex framework of workplace regulations and to ensure that you are supported in achieving your business' goals and objectives.

Please reach out to us if we can assist you with any of your people and culture, and workplace relations needs.

Kind regards

Tracey Doedens

Managing Director

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The Changing Landscape for Termination Payments

Same-day payments: what's changed?

A growing number of cases indicate that delaying certain termination payments may not align with the provisions of the Fair Work Act 2009 (the Act).

In some circumstances, employers are required to make specific payments prior to or on the employee's last day of employment, not in the following pay run after the termination of employment.

A recent example was seen in the decision of Jewell v Magnium Australia Pty Ltd [2025] FedCFamC2G 201 (20 February 2025). In this decision, in which the employer successfully defended against a general protections claim brought by the Applicant, the employer was found to have breached various provisions (including section 117(2), section 119 and section 90(2) of the Fair Work Act), having admitted it had paid the employee's various final entitlements after his last day of employment.

The Federal Circuit Court found this to be a breach of the National Employment Standards (NES). As a result and while this has in the past often been viewed as a "technical breach", the employer was penalised for three breaches of $6,200 each amounting to a total of $18,600 for failing to pay notice, redundancy pay and unused annual leave on the day of termination. For many employers, it has long been standard practice to process an employee's final pay in the next scheduled pay cycle after termination. This approach is often supported by Modern Awards, which commonly provide that termination payments must be made within seven days of employment ceasing.

However, recent Court decisions indicate that this long-standing practice may expose employers to risk.

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Different payments, different obligations

One of the challenges for employers is that not all termination payments are treated the same.

Notice and Notice Paid in Lieu Payments – Section 117 of the Act

The requirement to either provide notice or, if paying salary in lieu of notice, in order for a termination of employment to become effective derives from the specific wording of section 117(2) of the Act which specifies:

> **Amount of notice or payment in lieu of notice**
>
> (2) *The employer must not terminate the employee's employment unless:*
>
> *(a) the time between giving the notice and the day of the termination is at least the period (the minimum period of notice) worked out under subsection (3); or*
>
> *(b) the employer has paid to the employee (or to another person on the employee's behalf) payment in lieu of notice of at least the amount the employer would have been liable to pay to the employee (or to another person on the employee's behalf) at the full rate of pay for the hours the employee would have worked had the employment continued until the end of the minimum period of notice.*

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In section 117(2)(b), it is significant that the wording refers to “has paid to” in the past tense.Therefore, notice which is provided as salary paid in lieu must be paid on or prior to the date of termination (even in circumstances were an Award or Enterprise Agreement refers to the ability to pay termination payments within seven (7) days of termination occurring).

Redundancy and Accrued but Unused Annual Leave

In the instance of Jewell v Magnium Australia Pty Ltd, Champion J found in his decision that Dr Jewell (who was not Award covered) was paid the following entitlements “late” because they were not paid at the time of the termination of employment:

> *Magnium had to make payments as to notice, redundancy pay and accrued and unused annual leave as at the date of the dismissal of Dr Jewell. It did not do so. It late paid these entitlements.*

It was accepted in the decision and also in terms of setting the penalties that there was no evidence that the lateness by Magnium was “deliberate” in nature. In fact, one of the reasons for the late payment of the redundancy payment was a mistaken belief that the employer was a “small business” and, as such, would not have been required to pay the redundancy payment.

Other Payments paid on Termination of Employment

Other payments derived from awards or individual contracts may be able to be paid within a period specified in an award, enterprise agreement or contract of employment – typically this may be within seven days of the date of termination.

These payments can include outstanding wages, penalty rates and allowances, accrued entitlements such as time off in lieu (TOIL) and rostered days off (RDOs), bonus or commission payments etc.

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Payment of long service leave (including pro-rata amounts) is required to be paid within the time specified in the relevant State legislation which covers the provision of long service leave. This differs from State to state.

What should employers do now?

To manage risk and avoid costly penalties, employers should clearly identify which termination payments arise under the Fair Work Act and the NES, awards, agreements and employment contracts—and when each component must be paid. Even if there is a continuing discussion about the employer and employee reaching an agreement which may involve an additional payment being made to the employee – this does not permit an extension to the timeframe in which to pay termination payments (most especially notice payments) which are required to be paid either on or prior to termination of employment or within a set timeframe (for example, seven days).

- Plan ahead where possible and notify payroll early if a same-day termination payment may be required.
- Review internal processes to ensure termination payments can be processed promptly and accurately.
- Termination payments are an area where administrative convenience can quickly become legal exposure.

If you need support navigating a termination process or final pay obligations, please contact Quartz Consulting at info@quartzconsulting.com.au.

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Baby Priya's LAW

Last month we talked about upcoming changes to Government Funded Parental Leave and this has generated some parental leave enquiries from clients – one being 'Baby Priya's Law'.

The Fair Work Act has been amended to introduce new protections for employer funded paid parental leave in the event of stillbirth or the death of a child.

This change in legislation came about following an employee of 11 years having her 3 months of paid parental leave cancelled as a result of a still birth (baby Priya) while her husband was able to take his full leave entitlement.

From 7 November 2025, employees planning to take, or who are receiving, employer paid parental leave cannot have their parental leave cancelled or refused if their child is stillborn or dies. This applies if both:

- the employee would have been entitled to the leave under their terms and conditions of employment if their child had not been stillborn or died; and
- the leave is associated with the birth of an employee's child or the child of an employee's spouse or de facto partner, or the placement of a chid with the employee for adoption.

These changes do not require employers to introduce employer funded parental leave if they don't already provide it.

A similar protection applies to periods of unpaid parental leave under the Fair Work Act. If an employee's baby is stillborn or their child dies in the first 24 months of life, an employee can take up to 12 months unpaid parental leave and their employer cannot cancel their unpaid parental leave, or require them to return to work earlier than intended.

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significant recent DECISION

Commissioner of Taxation v Hall [2026] FCAFC 43
(10 April 2026)

ATO Win in closing Working From Home Tax Deductions

In April 2026 in a Full Bench decision of the Federal Court decision which may yet go on appeal to the High Court, the Australian Taxation Office (ATO) has won its appeal of an earlier Administrative Appeals Tribunal (AAT) decision which had allowed an ABC radio sports presenter and producer, Ned Hall, to claim a portion of his rental expenses ($5,878) for use of a second bedroom used as an office for working-from-home purposes during the COVID-pandemic. It was a significant factor in the decision that Hall was not self-employed – but rather was working as an employee.

The Full Bench found that the rental expenditure was essentially private in nature as follows:

> *As noted earlier, the mere use of a room in a home for work purposes does not, of itself, transform an otherwise private or domestic expense into a deductible one. The determinative inquiry remains the essential character of the expenditure, assessed by reference to what the expense secures, not how the secured room is used. Compulsion or necessity also cannot transform what would otherwise be private or domestic expenditure into deductible expenditure.[1]*

While the dollar amount was relatively small in the case in question, the ATO had concerns that the earlier AAT decision would set a precedent for the growing number of employees working-from-home on a permanent basis and seeking to claim a portion of their rent as being tax-deductible.

In a secondary aspect of the decision, the employee was also seeking to claim travel (car) expenses for travel between his rental home and various work offices. This claim was for the sum of $1,148. The ATO also won on this ground – that the expense of travelling from home to work was found to be private in nature and, as such, not a tax-deductible expense.

As close to one-third of working Australians are estimated to be renting their homes, the AAT's decision was viewed as having large consequences of many millions of dollars in deductible expenses which was the reason for the ATO's resistance of a move to open up tax-deductibility of rental expenses and also of travel costs between the claimed home office and a work place (noting that travel between home and work has long been held to be private in nature).

Whether if pursued the High Court will grant leave for the decision to be appealed is yet to be seen, but it is clear that the consequences for the Federal Government are so sizeable that any attempt to reopen these loopholes will certainly be met by considerable ATO resistance.

The decision highlights that working-from-home is clearly here to stay as employers, employees and regulatory authorities grapple with this significant change to the way we work and what this means for the concept of work into the future.

[1] Commissioner of Taxation v Hall [2026] FCAFC 43 (10 April 2026), paragraph 61.