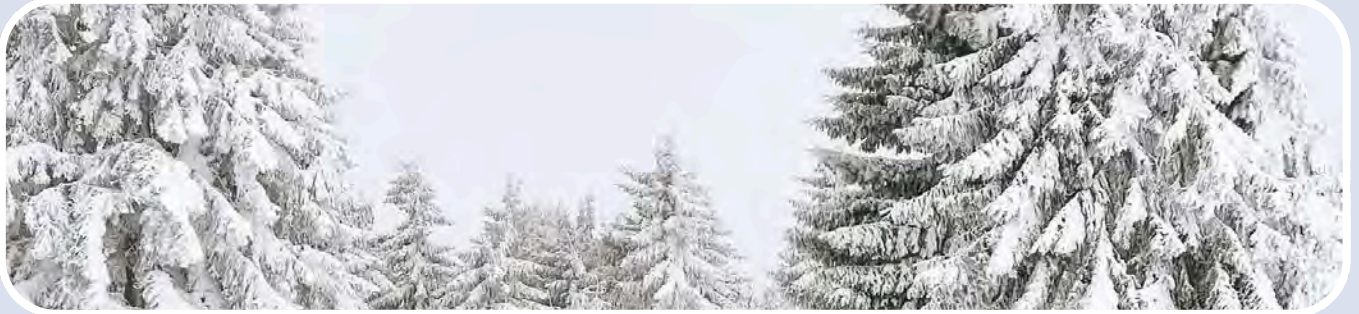




A MESSAGE FROM OUR MANAGING DIRECTOR

The new financial year is already off to a busy start with the latest Award increases commencing from the first full pay period in July, together with the commencement of the requirement to pay superannuation payments in each pay cycle.

The Fair Work Ombudsman has recently issued a reminder to ensure that all pay rates are up-to-date in your payroll systems and this should also include that any penalty rates and loadings are being correctly paid to your employees.

The Fair Work Ombudsman has continued its program of unscheduled inspections across various sectors around the nation which recently has included, but is not limited to, the agricultural sector and the restaurant industry.

As just one example of this, the FWO has issued a media statement that it has recently “recovered more than \$129,000 for 180 underpaid workers in Hobart’s fast food, restaurants and cafés sector following surprise inspections.” This included unscheduled inspections of twenty-eight businesses in Hobart’s CBD, North Hobart, Bellerive, Howrah, Rosny, Rosny Park and Lindisfarne last year. Notably only six (6) of these businesses were found to be compliant with twenty-two (22) businesses being non-compliant to at least some extent.



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With the consequences of underpayments to workers becoming increasingly serious (including via the introduction of criminal penalties in some jurisdictions as well as fines), it is important to ensure that your business is Award/EA compliant in terms of wage and other payments to your employees.

Quartz Consulting is able to assist with conducting payroll audits and also in providing advice in relation to Award interpretation and Award coverage.

This e-newsletter is designed to assist our clients and other stakeholders in keeping on top of developments in both human resources and workplace relations. We hope that you will enjoy our latest edition of "In The Know".

Tracey Doedens
MANAGING DIRECTOR

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Kathy Dwyer
Workplace Relations Consultant

2nd or 3rd of
September 2026

8:45am - 1:00pm

Rydges Hotel
Hobart

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A LITTLE MORE CONVERSATION:

The Best Managers are those who have the difficult conversations early



A client said to us recently – “I only wish that I had started performance management sooner before it got to this point.” This is a sentiment that we have heard, many times.

Much of the fear of commencing performance discussions with employees who are failing to meet their performance expectations arises from a dread that the discussion may escalate into any of the following scenarios:

- An unfair dismissal claim;
- A general protections claim;
- A worker’s compensation claim;
- A claim of bullying being directed at the manager; or
- Extended personal leave claiming a stress-related injury.

But the taking of reasonable management action in a reasonable and consultative way is often a valid defence to many of the above claims and actions.

By not being willing to have an honest discussion with the employee, employers are often paying the person's wages for months or even years on end – while the performance concerns are going unheeded over this time. Often the cost of defending against any of the types of claims as noted above may be a drop in the ocean on top of the wages already spent by the employer whilst sitting back and hoping that things will somehow improve without intervention or that the employee will resign and leave of their own accord. But poor performance is rarely addressed without some action to communicate the aspects of performance which need to improve and by setting in place some supports to assist the employee to improve.

Here's a few tips to assist you with having those difficult performance discussions and to prevent the situation from escalating:

- Make it part of your monthly schedule to have **a one-on-one catchup with each of your direct reports every month or every quarter**. Keep a tight agenda for the catchup (which might be over a coffee to make it more friendly) and initiate the discussion by asking each of your direct reports:
 - What have been your key achievements this month/quarter?
 - What have been the challenges or road blocks you are facing with achieving your KPI's?; and
 - How can I assist you to maximise your performance at the moment?

Ensure you keep notes of what you discuss at the catchups – even if the meeting was held in an informal setting.

- Ensure that you set key performance indicators (KPI's) for each of your direct reports each year which align to your organisation's or department's goals. This should form the basis of your monthly or quarterly catchups.
- Do not put off completing annual performance appraisals for each of your direct reports – but start the process with getting the employee to perform a self-assessment. In most cases, employees will be honest about their areas for improvement – which allows you to work with their own self-assessment and say, “Yes, I think this is an area that we could work on addressing together in the coming months” etc. If the person doesn't identify or raise the issue of concern – try suggesting, “Have you thought about how you could better approach?” as a way of bringing the discussion around to the aspects you want the employee to improve.
- Finally, make sure you are accessible to your direct reports and keep your communication channels open. This can be by way of either starting or ending each week with a quick call to each of your team members – so that regular discussion about what's going well and what isn't becomes an element of your dialogue with your team each and every week.

If the challenges seem overwhelming – there are plenty of resources available to assist employers with having difficult conversations. Please feel free to reach out to Quartz Consulting. We offer both leadership training and also tailored advice for all your workplace relations needs.



Stop Press

A New Fair Work Court to be created by the Federal Government

The Prime Minister Anthony Albanese has recently announced the creation of a new Fair Work Court which will sit alongside the current Fair Work Commission and the Fair Work Ombudsman. It has been announced that specialist judges with workplace relations expertise will sit on the new Court, which is charged with faster resolution of disputes which can currently take up to two years to be resolved via the current court system.

The Federal Government has announced its intention to consult throughout 2026 on the role and functions of the new court and on the way in which this court will interface with current workplace regulatory authorities “to provide simpler, fairer and faster workplace justice”.

While unions have generally welcomed the announcement, business councils and employer bodies have expressed concern about the cost, increasing complexity and other implications of adding yet another court into the current system – and whether this will ultimately be another barrier faced by Australian businesses in an increasingly competitive global environment.

We will provide further updates as information emerges on the operation of the new court.



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Quartz Consulting *Welcomes our Newest Team Member*

We are delighted to welcome **Matilda Spakman** to the Quartz Consulting team as our new Administrative Assistant.

Matilda brings over seven years of customer service experience with a strong background in both finance and retail.



Currently studying a Certificate IV in Human Resources, Matilda combines valuable industry knowledge with a genuine passion for supporting people and building positive workplace experiences.

Matilda's client-centred mindset and commitment to delivering quality service help ensure a seamless and positive experience for our clients.

Outside of work, Matilda enjoys spending time with her dog, often exploring new walking tracks or heading out on day trips. She also loves travelling and embraces every opportunity to discover new places and experiences.

Please join us in welcoming Matilda to Quartz Consulting. We are excited to have her on board and look forward to the contribution she will make to our team and clients.

Significant Recent Decision: *Fletcher v Gordon House Management Pty Ltd [2025] FWC 2572*



One of the questions which baffles many employers is whether an employee's employment can be terminated when that employee is on sick leave (or personal leave).

The answer to this question is complex and is largely dependent on whether there is a valid reason for the termination and whether there has been procedural fairness afforded to the employee as part of the process for contemplating termination of employment.

A recent decision in *Fletcher v Gordon House Management Pty Ltd [2025] FWC 2572* has shed light upon this perennial issue.

Mr Nicholas Fletcher was a General Manager responsible for managing an onsite café at Gordon House. At first instance, the Presiding Member, Commissioner Tran, found that Mr Fletcher's employment was terminated for a valid reason, being both unsatisfactory performance and also misconduct when considered together, and that the termination was not harsh.

In relation to the question of Mr Fletcher's employment being terminated during a two-week period of sick leave, Commissioner Tran found as follows:



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[66] Mr Fletcher was aggrieved by being dismissed while he was on sick leave.

[67] Mr Banson gave evidence that he “made the call to terminate [Mr Fletcher] while he was on sick leave,” because he got the impression that Mr Fletcher was continuing to get doctor’s certificates because he could not answer Mr Banson’s questions.

[68] An employer can dismiss an employee while they are on leave but not because they have taken the leave (see s 352 of the Act). Mr Banson’s evidence is clear that Mr Fletcher being on sick leave was factored into his decision making about the timing of dismissal. He did not inform Mr Fletcher of his suspicions or give Mr Fletcher an opportunity to respond.

[69] This does weigh in favour of a finding of the dismissal being unjust, as Mr Fletcher did not get the opportunity to explain to Mr Banson that he was genuinely unwell rather than that he was avoiding the issues raised by Mr Banson. However, Mr Fletcher’s response (which he said was prepared prior to his dismissal and sent immediately after his dismissal) replicated the responses he had already provided during the meeting of 7 January 2025. Ultimately, an opportunity to respond to Mr Banson’s further suspicion about the reasons for Mr Fletcher being off work may have – at most – delayed the dismissal. I do not consider that this factor weighs so greatly in favour of a finding that the dismissal was unjust as to outweigh the factors discussed above.

Therefore, the Member took the view that the period of sick leave, which notably played no part in the reasons for the termination of employment, “at most – delayed the dismissal”, but did not “outweigh” the other factors in terms of considering whether the termination was “unjust”.



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On appeal, the Full Bench supported the Commissioner's findings and dismissed the appeal.

A few important factors in terms of this decision include that the taking of sick leave played no part in the reasons for the dismissal. Section 772(1)(a) of the Fair Work Act 2009 ("the Act") which sets out that employment is not to be terminated on certain grounds which includes "temporary absence from work because of illness or injury of a kind prescribed by the regulations". Additionally, under section 352 of the General Protections provisions of the Act, it is unlawful to dismiss an employee because they are temporarily absent from the workplace due to illness or injury. This was not the case in the Fletcher decision – noting that the reason for the dismissal was a combination of performance and conduct issues which has already been put to Mr Fletcher as part of the disciplinary process conducted with him prior to the taking of the period of sick leave.

Additionally, it is important to ensure – as occurred in the Fletcher decision – that procedural fairness has been applied – most significantly that the person has been afforded the opportunity to respond to the allegations which form the basis of the valid reason for the dismissal. As noted above, Mr Fletcher was afforded this opportunity and did respond prior to the taking of the leave.

Having noted the above factors, the termination of employment during a period of sick leave is necessarily complex and always needs to be carefully considered to ensure that both the reason for the dismissal and the procedural process are valid and fair in all the circumstances.