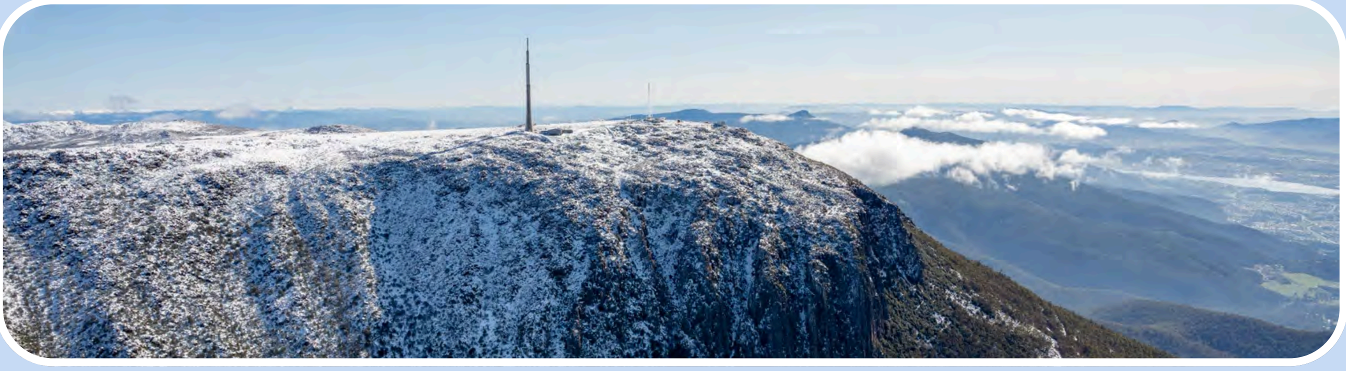
July 2026

IN THE KNOW

Quartz Consulting Monthly E-News

t: 1300 936 223 or e: info@quartzconsulting.com.au



A MESSAGE FROM OUR MANAGING DIRECTOR

With the shortest day of the year behind us and spring on the horizon, it is a timely opportunity for businesses to reflect on lessons learned and prepare for the challenges and opportunities of the new financial year.

Over the past 12 months, many businesses have faced complex employment matters, including terminations, redundancies, contractor arrangements, and managing employee absences due to illness or injury. These situations have reinforced the importance of having robust employment contracts, consulting appropriately with employees, and managing workplace issues in a fair and compliant manner.

At Quartz Consulting, we are committed to providing practical, responsive support to businesses of all sizes. Whether you need assistance managing workplace issues, updating policies and procedures, or navigating employment law obligations, we are here to help minimise risk and provide a clear path forward.

Tracey Doedens

Managing Director

Parental Leave

IS YOUR POLICY UP TO DATE?

If your business has a Parental Leave Policy that references the Government Paid Parental Leave Scheme, it's time to review and update your policy to reflect the recent legislative changes.

From 1 July 2026, eligible families are able to access up to 26 weeks of government-funded paid parental leave – an increase from 24 weeks in 2025. The child's date of birth or adoption will determine how many days an employee is entitled to be paid.

Paid parental leave can be shared with a partner or other parent. From 1 July 2026 the amount of leave reserved for a partner or other parent is 20 days – an increase from 15 days. Both parents can take the 20 days of paid parental leave at the same time.

It is also worth checking that your payroll system is set up to pay superannuation on government-funded paid parental leave.

For assistance with your Parental Leave Policy, reach out to us at Quartz Consulting.

Medical Incapacity can be a Valid Reason for Dismissal

The Fair Work Commission (FWC) has upheld the dismissal of a long-serving ferry customer service operator whose medical condition prevented her from safely performing the inherent requirements of her role.

In **Daunis v Rivercity Ferries Pty Ltd [2026] FWC 740,** the employer relied on a significant body of medical and operational evidence before deciding to terminate the employee's employment.

Over a 12-month period, the employee was absent for 114 days due to ongoing health issues, including deep vein thrombosis and a genetic clotting disorder. The employer obtained multiple medical certificates, directed the employee to attend three independent medical examinations (IMEs), and reviewed specialist advice regarding her fitness for work.

While some medical evidence suggested the employee may eventually return to work following surgery, the IME concluded she was not fit for her full duties at the time and could only return with temporary restrictions. The employer considered whether reasonable adjustments could be made but determined that reduced hours and modified duties were impractical given the operational requirements of working on a ferry and the impact on other staff.

Before terminating employment, the employer issued two show cause letters, provided the employee with an opportunity to respond, and considered her submissions. A decision was made to terminate on the grounds of her medical incapacity preventing her from performing the inherent requirements of the job.

Valid reason for dismissal

Around 4 months later, the employer received a letter from the vascular and endovascular surgeon certifying that the ex-employee was cleared to return to full duties. The ex-employee submitted that the employer did not have a valid reason for termination because she would have been able to carry out the full requirements of the role following surgery.

The FWC found that the employer had conducted a thorough and evidence-based assessment of the employee's capacity and was entitled to rely on the medical information available at the time of the decision. Importantly, medical evidence obtained after the dismissal confirming the employee's later recovery was not relevant to whether the dismissal was justified when it occurred.

The FWC found that the employer had a valid reason for dismissal.

Key Take Aways

The decision highlights the importance of:

- Employers gathering comprehensive medical evidence prior to making a decision;
- Genuinely assessing the feasibility of workplace adjustments
- Following a procedurally fair consultation process before terminating employment on the grounds of medical incapacity.

Contracts for Independent Contractors

Over the past few months, a number of clients have had issues arise in relation to the work undertaken by Contractors or relating to alleged inappropriate behaviour by Contractors when undertaking work for the business.

In assisting some clients to deal with the issues, it has been found that the contractor arrangements have been formalised in an email, as opposed to entering into a specific written and signed contract or agreement. This has resulted in challenges in addressing issues due to the absence of provisions concerning the Contractor having to work in accordance with the business' policies and procedures.

Furthermore, when looking to terminate the contracting arrangement, as the contractor arrangements were simplistic in terms of confirming their engagement and the amount of money that would be paid for any engagement, the lack of details relating to the reasons why termination could occur, and how either party could terminate the agreement was the cause of both delay and dispute between the parties, which could have been avoided by a clear agreement being in place from the start.

Whilst Contractors do not have access to make an unfair dismissal claim to the Fair Work Commission, subject to being found to be a legitimate contractor, contractors do have avenues to take legal action in relation to the termination of a contract, and at the Fair Work Commission, a Contractor can make a General Protections Claim.

To protect your business there should be a specific contract in place when engaging a Contractor to undertake work for you. Such contracts cover the areas of:

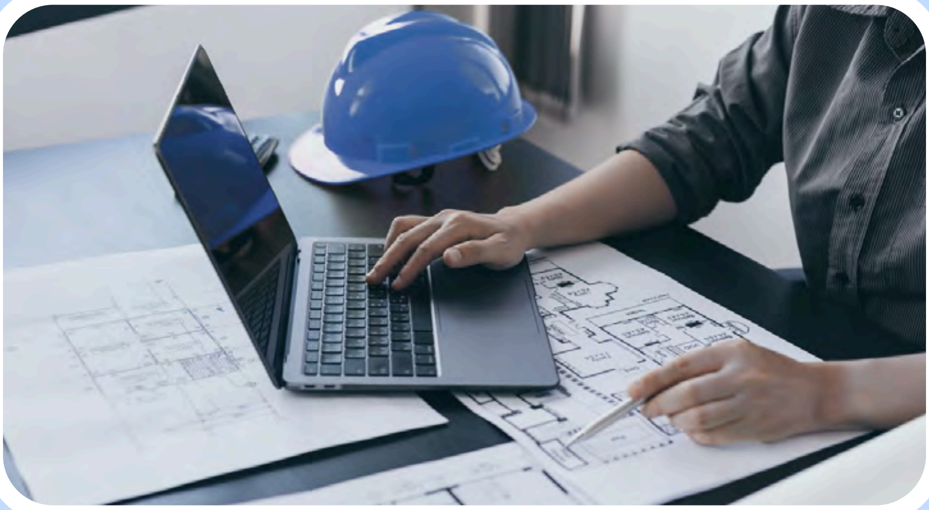
- What services will be provided.
- What payments will be made for the services provided, including payment of the Superannuation Guarantee Contribution.
- Details about the ability for the Contractor to subcontract work so as to ensure both clarity and that the business is not viewed as the principal in any subcontractor agreements.
- The requirement to work in accordance with the businesses policies and procedures, including Work, Health and Safety requirements.
- Who will provide any required tools and equipment.
- The necessity to meet pre-screening requirements such as police checks, Working with Vulnerable Person's Registration etc.
- How Contractor arrangements can be terminated and on what basis.
- The requirement for the Contractor to have the necessary insurances in place.
- How intellectual property will be managed.

It is vital that businesses have a complete contract in place for the engagement of Contractors to ensure that the risks to the business are effectively managed.

Businesses engaging contractors should ensure their contracts contain the key provisions above, and reissue them where necessary.

It is also important that any future Contractors are provided with a comprehensive contract to meet the needs of the business and mitigate the risks associated with the engagement of a contractor.

If you would like to review your current Contractor arrangements, or need a new, updated Contractor contract, please contact **Kathy Dwyer,** Workplace Relations Consultant at **kathy@quartzconsulting.com.au** who can assist you.



Requirement to Consult with Employees

RE POTENTIAL REDUNDANCY

All modern Awards detail that there is a requirement to consult with employees regarding any major change within the business that may impact on that employee. Failing to properly consult can result in a claim to the Fair Work Commission.

Under the *Fair Work Act* 2009, an employee cannot make a claim for unfair dismissal in the case of a "genuine redundancy" as defined under section 389 of the Act. If, however, the redundancy is found by the commission to not be genuine, then the Fair Work Commission can proceed to determine the employee's unfair dismissal claim.

A redundancy occurs when an employer no longer wishes for the job being undertaken by an employee, to be done by anyone, or the duties are absorbed into other positions, or if the employer becomes bankrupt or insolvent.

In relation to making a position redundant, there is a requirement for the business to consult with the effected employee/s. This has to be a genuine consultation, and consideration must be given to suitable alternative options available, such as redeployment to another position, prior to any final decision being made about proceeding to make the position redundant.

The employee must be given time to consider the information provided and offered an opportunity to put forward suggestions to be considered by the business as an alternative to being made redundant.

An example of the risk to a business by failing to consult with an employee, is the business:

Nytro Pty Ltd trading as Nitro Gym in Kilsyth Victoria

- that failed to consult with an employee about their position being made redundant. The employee who had worked with the business part time for nine months had been informed that her role as no longer required and she was subsequently dismissed.

In the above case the employer also alleged in their response to the employee's unfair dismissal claim, that the employee had been terminated as a result of misconduct, however the Commission found the employee had not been advised of this or given the chance to respond to any reason related to her performance.

The Commission held that the employer did not consult with the employee in any meaningful way, and the business had also not considered any redeployment options that were available to the worker. The Commission found that as a result, the dismissal was not a genuine redundancy, but rather a clear unfair dismissal.

The employee was awarded close to $8,000.00 by the Fair Work Commission, that included compensation for childcare costs that had been incurred as a result of being terminated unfairly. Reinstatement was not ordered given the business being considered a small business.

It is important that employers properly demonstrate that the role being made redundant is genuinely no longer required, in additional to undertaking the necessary consultation obligations.

It is also important to remember that making a person redundant, due to below standard performance or inappropriate workplace behaviour, is not the correct mechanism to address these workplace issues, because if tested in the Fair Work Commission, the Commission may find the redundancy not to be genuine, rather the employee was unfairly dismissed.

If your business is considering making one or more positions redundant, please do not hesitate to contact ***Quartz Consulting*** so that we can guide you through the process to mitigate the risk of a successful unfair dismissal claim.

info@quartzconsulting.com.au or 1300 936 223