

# A VISION IN THE WORKPLACE

## Our December edition of Vision includes:

- Holiday Office Closure information;
- South Australian Employment Tribunal grants workers' compensation for WFH injury;
- A landmark High Court Case allows employees to claim compensation for psychiatric injury arising from breach of employment contracts.



## Christmas and Holiday Office Closure Information

Stevens & Associates Lawyers wishes you and your family a happy and healthy Christmas and New Year. We thank you for all your support this year and look forward to working with you again in the new year.

Please note, our office will be closed from Tuesday 24 December 2024 and re-opening on Monday 6 January 2025.



## South Australian Employment Tribunal Grants Workers' Compensation for WFH Injury

### Background

In a recent South Australian Employment Tribunal (the SAET) decision, Lauren Vercoe (Ms. Vercoe), Asset Officer for the City of Charles Sturt (the Council), sought workers' compensation after injuring herself in September 2022 while working from home. Ms. Vercoe fractured her arm and

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temporarily injured her knee after tripping over a 60cm metal pet fence she had set up to enclose a colleague's puppy which she was dog-sitting. The incident occurred during an authorised coffee break.

## Issues

1. Whether the fall occurred during an authorised break as per s 7(5)(b) of the *Return to Work Act 2014 (SA) (RTW Act)*.
2. Whether Ms. Vercoe's employment was a significant contributing cause of her injuries.

## Key Findings

### 1. *Authorised Break*

The SAET held that Ms. Vercoe's fall occurred during an authorised break. As her home was her designated workplace, her coffee break was deemed an authorised interval under the RTW Act.

### 2. *Significant Contributing Cause*

Magistrate Carrel found that the pet fence, as a feature of her workplace at home, constituted a significant contributing cause of Ms. Vercoe's injuries. Despite the Council not providing, instructing or being aware of the pet fence, the SAET held that the Council's responsibility for

workplace safety extended to the risks Ms. Vercoe autonomously managed within her home office.

### 3. *Employer's Responsibility and WFH Arrangements*

The SAET acknowledged that although the Council issued a checklist for employees working from home, it "effectively abrogated its responsibilities for a safe working environment" beyond this. Magistrate Carrel emphasised that work from home (**WFH**) arrangements introduce additional risks, which may not align with traditional workplace hazards. Given Ms. Vercoe's autonomy in setting up her home office, the SAET dismissed the Council's Workers Compensation Scheme's contention that her injury, stemming from a self-created hazard, fell outside the scope of employment-related risk.

## Outcome

The SAET accepted Ms. Vercoe's right humerus fracture and temporary knee injury as compensable. Magistrate Carrel noted that further proceedings would address the specifics of Ms. Vercoe's compensation, given limited information about her claims.

## Significance

This decision highlights evolving responsibilities for employers and the increased need for adaptable WFH safety protocols and policies, as employer

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responsibility for workplace safety may extend to employee-managed environments.

If you have any questions about WFH policies and how they may impact you as an employer or employee, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.



## Landmark High Court Case allows Employees to Claim Compensation for Psychiatric Injury Arising from Breach of Employment Contracts

### Overview

In the recent case of *Elisha v Vision Australia Ltd* [2024] HCA 50, the High Court of Australia has ruled that workers unfairly dismissed in breach of

their employment contract can now claim compensation for psychiatric injury resulting from the dismissal. In a 6-1 verdict, the High Court ordered that Vision Australia Ltd (**Vision Australia**) must pay dismissed employee Adam Elisha (**Mr. Elisha**) \$1.4 million, inclusive of damages for psychiatric injury resulting from his wrongful termination. This decision overturns the 115-year-old precedent of *Addis v Gramophone*, which previously prevented claims for psychiatric harm arising from breach of employment contracts.

### Background

Mr. Elisha's employment with Vision Australia was terminated on 29 May 2015 following an incident occurring at a hotel during work travel, where it was alleged that Mr. Elisha engaged in aggressive and intimidating behaviour towards a hotel employee (**the Hotel Incident**).

Following the Hotel Incident Vision Australia commenced internal disciplinary proceedings, and Mr. Elisha was provided a Stand Down Letter (**the Letter**) containing allegations regarding the incident, was stood down, and required to attend a disciplinary meeting (**the Meeting**). During the Meeting, Mr. Elisha denied the allegations of aggressive behaviour contained in the Letter. Consequently, Vision Australia did not accept Mr. Elisha's account of the Incident and terminated Mr.

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Elisha's employment based off previous allegations of aggressive behaviour which were not raised with Mr. Elisha at the Meeting. Vision Australia's Management staff, including Mr. Elisha's manager made a recommendation to prefer the hotel proprietor's account of the Incident over Mr Elisha's account.

Following Mr. Elisha's termination, he was subsequently diagnosed with major depressive disorder. Mr. Elisha commenced proceedings in August 2020, claiming injuries for his psychiatric injury.

## Decision

The Supreme Court of Victoria (**the Supreme Court**) found that Mr. Elisha had been unfairly dismissed. The Supreme Court labelled the internal disciplinary process of Vision Australia "a sham and a disgrace", finding that Vision Australia had breached its own Disciplinary Procedures, which were incorporated into Mr. Elisha's contract of employment.

In their judgment, a 6-1 majority of the High Court recognised the psychological impact of wrongful termination, stating the importance of a person's employment in modern society and the ability for unfair dismissal to severely impact a person's livelihood, identity and sense of self-esteem. In reaching their decision the Court considered Mr. Elisha's tenure at the company.

## Key Takeaways

Employers and employees must be aware of processes, procedures and codes of conduct which are incorporated into an employee's contract of employment.

If you have any questions about this case and how it may impact you as an employer or employee, please do not hesitate to contact Nick Stevens, Josh Hoggett, Evelyn Rivera or Ayla Hutchison.

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