



## Breach of employment contract resulting in psychiatric injury delivers \$1.44m compensation

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It's commonly understood that if you suffer a work-related psychological injury (for example, due to bullying, sexual harassment, discrimination, assault, etc), you may be eligible for [worker's compensation benefits](#). But what if you suffer a psychiatric injury as a result of your employer's breach of your workplace rights and their contractual obligations under your employment contract or enterprise agreement? In late 2024, the High Court found the employer liable to pay compensation as a result of that breach of their contractual obligations.

In the High Court of Australia (High Court) decision in [Elisha v Vision Australia Limited \[2024\] HCA 50](#), the Court ruled that employers may now be found liable for their employees' psychiatric injuries if the injuries were caused as a result of the employer's breach of contract. This decision by the High Court sets a new precedent that employees are now able to recover damages (compensation) from a breach of contract causing mental distress.

In this case review, we look at the history of *Elisha v Vision Australia* (through the various Court appeals) and what this decision means for Australian workers.

### Background – what led to the psychiatric injury?

Mr Elisha was employed by Vision Australia Limited, and while on a business trip in Bairnsdale, Victoria, on 23 March 2015, Mr Elisha stayed overnight at the Bairnsdale International Hotel. At 12.30 am, Mr Elisha heard a noise from his room, which was keeping him awake. He contacted the hotel's after-hours line for assistance.

During Mr Elisha's interaction with the hotel staff member, it is alleged that Mr Elisha spoke in a rude and dismissive manner, leaving the staff member feeling humiliated. Subsequently, the Bairnsdale International Hotel requested that Mr Elisha not stay at the hotel again.

The incident was reported to Mr Elisha's employer. On 19 May 2015, Mr Elisha met with his manager and was given a "stand down" letter, which outlined the allegations related to the hotel incident.

The stand down letter stated that the meeting would be conducted in accordance with the company's "Vision 2015 Disciplinary Procedure" contained in the enterprise agreement. The stand down letter did not address any other performance or disciplinary matters and required Mr Elisha to attend a meeting two days later. Mr Elisha denied the allegations (related to the hotel incident) outlined in the stand down letter.

Following the meeting, a decision was made by Vision Australia to terminate Mr Elisha's employment as of 29 May 2015 due to "serious misconduct". This decision was informed by previous allegations of aggressive behaviour, which were never put to Mr Elisha either in the stand down letter or at the meeting. This resulted in Mr Elisha having no opportunity to address any further allegations not related to the hotel incident.

Upon being terminated, Mr Elisha was diagnosed with adjustment disorder and major depressive disorder.

Initially, Mr Elisha pursued an unfair dismissal claim with the Fair Work Commission. This resulted in a settlement in July 2015 where Vision Australia paid Mr Elisha six month's salary, the maximum amount of compensation available under the *Fair Work Act 2009*.

## Supreme Court findings – common law claim for breach of contract

In 2020, Mr Elisha brought a common law action in the Supreme Court of Victoria, claiming compensation for pain and suffering and economic loss.

The case alleged breach of contract by the employer. In particular, that Vision Australia breached their contractual obligations towards him as an employee, as he was unaware that any prior allegations of misconduct were being considered during his meeting with them in May 2015. Due to this lack of knowledge, Mr Elisha was unable to address or defend such allegations, resulting in his termination.

At trial, the Supreme Court of Victoria stated that the disciplinary process was a "sham and disgrace". As the disciplinary procedure was within Mr Elisha's contract with Vision Australia, the employer had breached their contractual obligations towards Mr Elisha by not providing him notification of all the allegations being considered.

As such, Mr Elisha was awarded **\$1,442,404.50** in compensation for Vision Australia's breach of contract.

# Court of Appeal overturns the Supreme Court decision

Vision Australia appealed the decision of the Supreme Court. This decision was overturned by the Court of Appeal, who stated that as per *Addis v Gramophone Company Ltd* [1909] AC 488 (an old UK contract case), the House of Lords:

*“... held that the [employee] could not recover damages for breach of contract [due to] his injured feelings and loss of employment prospects arising from the harsh manner of his dismissal”.*

Therefore, it was found that despite Vision Australia’s disciplinary procedure being incorporated into their contract with Mr Elisha and although Mr Elisha sustained a psychiatric injury due to the employer’s breach of contract, the employer cannot be held liable for Mr Elisha’s remote\* psychiatric injury as it is beyond Vision Australia’s contractual duty.

*\* The term “remote” relates to whether or not, at the time the contract was entered into between Vision Australia and Mr Elisha, Vision Australia could have reasonably expected such a result (the psychiatric injury) to occur due to unfair and unreasonable disciplinary procedures resulting in termination of employment.*

Mr Elisha appealed to the High Court on 11 December 2024.

## High Court decision finds in favour of the employee - \$1.44m compensation reinstated

The appeal was a success for Mr Elisha.

The majority of the High Court stated that Vision Australia had breached their contractual obligation to Mr Elisha as an employee, as he should have been made aware of **all** allegations being considered at the meeting in May 2015.

Further, the High Court found that psychiatric injury constitutes a personal injury with regard to a breach of contract. This is a change from the previous position that such an injury was not compensable.

The Court also found that Mr Elisha’s injuries were not too remote because the employer should have reasonably contemplated that he could suffer a serious psychiatric injury by the breach of contract.

## What does this mean for workers who have sustained a psychological injury due to breach of employment contract?

The High Court decision of *Elisha* is a pivotal decision for workers who have sustained a psychological injury due to their employer’s breach of contract, whether that be an individual contract between employer/employee, an enterprise agreement or provisions afforded workers under the *Fair Work Act*.

Workers who suffer a psychiatric injury as a result of workplace rights and their employer's contractual obligations may now seek compensation by way of a common law claim.

## WorkCover claims due to mental illness vs compensation due to breach of contract

Mr Elisha's claim was not brought under Victoria's WorkCover scheme but rather a common law personal injury claim in an employment context. The differences may appear subtle for injured workers and they are certainly nuanced, requiring legal investigation and interpretation by an experienced personal injury lawyer.

If you suffer a psychological illness related to your employer's breach of contractual obligations (as opposed to, for example, an assault at work or sexual harassment or discrimination), you should seek advice from a personal injury lawyer about the different options available to you to seek compensation.

### Worker's compensation claims for psychological injury

If you have sustained a psychological injury at work/related to work, you may be entitled to pursue a worker's compensation claim in your relevant State or Territory.

In Victoria, WorkCover entitlements include medical and like expenses, lost wages and a lump sum payment if your injuries are permanent and stable.

If you can establish that your injuries occurred in negligent circumstances and you have a permanent and serious injury, then you can also pursue common law damages for pain and suffering and economic loss.

You can learn more about this in our earlier blog, ["WorkCover and mental health claims for psychological injury"](#).

## Why Guardian Injury Law

It is important that you receive accurate legal advice in order to maximise your entitlements. It is also crucial that you speak with a lawyer who can support you if you have sustained a psychological injury.

At Guardian Injury Law, we understand the complexities that each personal injury claim (including worker's compensation claims) can bring and are able to listen to you and provide you with advice in a trauma-informed manner.

### Contacting Guardian Injury Law

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