

# High Court Rules That Employers Can Be Liable for Psychiatric Injury Caused by Breach of an Employment Contract

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The High Court of Australia (High Court) has moved away from the long-standing view that psychiatric injury caused by the breach of an employment contract is not compensable.

The case of *Elisha v Vision Australia Limited* [2024] HCA 50 confirms that an employer may be liable for psychiatric injury caused by a breach of contract. In this case, the employee was awarded damages of AU\$1.45 million for lost earnings and for pain and suffering.

## Brief Background

- In March 2015, an altercation occurred between a hotel manager and an employee, Mr. Elisha, who was staying at the hotel during a work trip.
- The hotel manager accused Mr. Elisha of engaging in “aggressive” and “intimidating” conduct and made a complaint to Mr. Elisha’s employer (Vision Australia).
- Mr. Elisha was subsequently provided with a “stand down letter” from his employer alleging serious misconduct and breaches of several of Vision Australia’s policies.
- In May 2015, a disciplinary meeting was held between Mr. Elisha and Vision Australia, with Mr. Elisha’s employment being terminated on 29 May 2015.
- Following termination, Mr. Elisha was diagnosed with major depression and an adjustment disorder with no capacity for work for the foreseeable future. Mr. Elisha was successful in an unfair dismissal claim and was awarded the maximum compensation available in June 2015.
- Mr. Elisha then made a successful breach of contract claim in the Supreme Court of Victoria.

## Trial Judge Findings

The trial judge found that:

- Mr. Elisha was treated appallingly by Vision Australia and consequently suffered a very serious psychiatric injury.
- Mr. Elisha’s employment contract incorporated the employer’s disciplinary procedures as terms of the employment contract.
- Liability for psychiatric injury was not beyond the scope of a contractual duty relating to the manner of a dismissal.
- Liability for psychiatric injury was not too remote.
- Psychiatric injury was of a class of injury for which damages were recoverable for breach of contract. The trial found Mr. Elisha was entitled to general damages, past loss of earnings capacity and future loss of earnings capacity.

## High Court Findings

Vision Australia appealed the Supreme Court’s decision to the High Court. The appeal concerned the availability of damages for psychiatric injury to an employee, in circumstances where the employee was dismissed following a disciplinary hearing that was described as a “sham”.

The High Court found the potential damage of a psychiatric injury was reasonably contemplated by the employer, as the employer had established processes of support (including counselling) for employees to address the risk of psychiatric injury (including in relation to dismissal).

The High Court noted that it would be reasonable to expect the employee to have been “so distressed” by the way they were terminated that there was a “serious possibility” that the employee would suffer a serious psychiatric injury.

## Case Comments

This case highlights that employers should be careful and consider whether their current employment contracts have any company policies and procedures inadvertently incorporated into them. Employers should be aware of any language that may incorporate other policies and procedures into the employment contract and should consider the language used (such as voluntary versus obligatory language). If policies are found to be incorporated into employment contracts, the risk of employee claims (in a number of different aspects) increases.

As employers may also now be liable for psychiatric injury in relation to the manner of employee-related investigations and terminations, employers should be aware of psychosocial risks in the workplace and the need to properly manage those risks, as such risks may lead to liability for psychiatric injury.

## Recommendation

To minimise these types of claims (e.g. the risk of an employee suffering a serious psychiatric injury), employers should take care to:

- Follow any and all contractual obligations (including policies and procedures that are incorporated into the employment contract) in relation to an investigation of workplace issues, specifically if termination is a possible outcome.
- Follow a fair and systematic approach to investigating, disciplining or terminating an employee.

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