



Federal workplace bullying laws

What do the recently implemented amendments to the Fair Work Act mean for private hospitals?

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Many cases of bullying at work result in psychological and, in some cases, physical injuries to workers. Amendments to the Fair Work Act 2009 (Cth), which commenced on 1 January 2014, give the Fair Work Commission (FWC) jurisdiction over complaints of bullying in workplaces covered by the Fair Work Act. This includes Australian private hospitals operated by companies.

Previously, bullying could only be raised as an example of conduct that may breach adverse action provisions of the Fair Work Act or unfair dismissal laws.

Due to constitutional issues, the provisions do not apply to unincorporated sole traders, partnerships and state public sector departments and authorities.

The commission is able to make orders requiring an individual or group to stop bullying behaviour, or requiring an employer to implement anti-bullying policies and training. However, orders for compensation or reinstatement are not available. Compensation may be available under workers compensation laws.

The amendments introduce a codified definition of workplace bullying describing a situation where an individual or group of individuals exhibit at work 'repeated, unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety'. The requirement for repeated behaviour means that a worker will not be considered to have been bullied in circumstances where the conduct has only

occurred once. However, single instances of unreasonable behaviour may give rise to other rights (such as rights under the general protections provisions of the Fair Work Act), depending upon the reason for the conduct. Since the legislation commenced, the commission has determined that incidents of bullying that occurred prior to 1 January 2014 may be taken into account if they are part of a pattern of ongoing behaviour.

The definition of 'workplace bullying' does not include reasonable management practices. Management practices are not limited to performance management or discipline, and extend to directions to employees generally to perform work. The onus is generally on the employee to show that the management action was unreasonable. The commission has indicated that whilst management action need not be perfect, it must be reasonable in the circumstances. Additionally, expressions of upset and frustration will not necessarily constitute bullying.

Bullying in the workplace can involve subcontractors and third parties. It is unclear whether, in those circumstances, an employer will be able to make submissions as an interested or affected party, particularly, if orders made by the FWC will impact on the way in which the employer deals with its staff. The definition of worker in these provisions also goes much further than "an employee". It is the same as the definition in the model *Work Health Safety Act 2011*, which defines a worker as "any person who carries out work in any capacity for a person conducting a business or

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undertaking”. This will include employees, contractors and subcontractors, volunteers, apprentices, trainees and work experience students.

If the FWC considers bullying has occurred, the FWC will be empowered to make any order it considers appropriate to prevent the bullying other than the payment of money. So far there have been more than 150 complaints made, and the overwhelming majority of those complaints have been made by employees against their managers. Many of the complaints have related to issues arising due to workplace change, including restructures, change in reporting lines and asking employees to do additional work (but still within their job description). These types of changes

tend to affect the wellness of employees who should be supported through these processes to minimise complaints of bullying.

A contravention of an anti-bullying order can result in a maximum penalty of \$51,000 for a corporation and \$10,200 for an individual.

It is now even more important for employers to update their anti-bullying policy and complaint procedures. Additionally, employers should appropriately address complaints.

This article was written with the assistance of Robin Young, Rachael Sutton and Tim Smyth. [PH](#)

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