

# ALERT

21 APRIL 2015

## BULLYING UPDATE: EXPECTED FLOOD TURNS INTO A TRICKLE

On 1 January 2014, the new anti-bullying regime was introduced at the Fair Work Commission (**FWC**) which for the first time gives employees the specific right to bring a claim against their employer for bullying. Up until then, no legislation existed in Australia which specifically prohibited workplace bullying. Prior to 1 January 2014, any claims for workplace bullying generally had to be addressed under the broader provisions of the applicable occupational health and safety legislation, workers compensation legislation, anti-discrimination legislation, and, in very serious cases, the criminal law.

### Expectation vs Reality

Prior to the introduction of the new anti-bullying regime, the General Manager of the FWC told the Senate Education, Employment and Workplace Relations Committee that the Commission was expecting to receive approximately 3,500 bullying claims per year under the new regime. The General Manager conceded that this figure had been arrived at based on "informed speculation" in light of the findings of the Productivity Commission's earlier inquiry into workplace bullying.

However, at a forum recently held in Melbourne, the Head of the FWC's Anti-Bullying Panel, Commissioner Peter Hampton, advised that a total of only approximately 700 anti-bullying applications were received by the FWC in 2014. In almost 40% of these cases, the employer did not have a written anti-bullying policy in place. In those cases where the employer did have a written anti-bullying policy in place, only approximately 30% of the employers indicated they had actually followed the policy. The relatively low number of bullying applications made to the FWC was notwithstanding that the FWC's website received a total of over 185,000 unique hits about bullying and that the FWC had received a total of almost 7,000 telephone inquiries in relation to bullying in 2014.

### What does this mean for employers?

The risks to employers of being subject to a bullying claim in the FWC are lower than first thought. We believe one of the key reasons for this is because the new bullying regime is a non-compensation jurisdiction. That is, if a bullying claim is successful, the FWC does



# ALERT

not have power to award compensation to the victim of the bullying. Rather, the FWC may make any other order it considers appropriate to prevent the worker from being bullied at work, such as an order for the bullying to stop, training, or the introduction of suitable workplace policies.

However, this does not mean that employers should ignore workplace bullying. On the contrary, the high number of unique hits on FWC's website and the telephone inquiries received by the FWC in 2014 indicate that bullying is a matter of significant interest to employees. Further, the cost of workplace bullying can still be significant for employers even in the absence of a claim. The report by the Productivity Commission referred to above estimated that the total cost to Australian businesses from workplace bullying ranged from \$6 billion to \$36 billion each year. This includes the cost of staff absenteeism, lower employee morale and productivity, high staff turnover, adverse publicity and legal costs.

The statistics in relation to the anti-bullying applications which were made to the FWC in 2014 outlined above indicate that the risk of employers being subject to a claim will be reduced if they have a suitable written anti-bullying policy in place and follow that policy when dealing with bullying complaints.

Accordingly, we recommend employers introduce a suitable written anti-bullying policy into their workplace if they have not already done so and ensure that managers and employees are properly trained in relation to that policy. To be effective, the anti-bullying policy should set out, amongst other things, the legal definition of

bullying, identify the source of the legal obligation, make it clear that bullying will not be tolerated, and prescribe an appropriate complaints resolution procedure.

#### Want to republish any of this newsletter?

If you would like to republish any part of this newsletter in your staff newsletter or elsewhere please contact our Marketing team on **+61 3 9608 2168**

#### Disclaimer

This Alert is intended to provide general information on legal issues and should not be relied upon as a substitute for specific legal or other professional advice.

#### Images

All images are used courtesy of [www.freedigitalphotos.net](http://www.freedigitalphotos.net)



#### For further information please contact:

**Martin Alden**, Partner and Head of  
Employment & Industrial Relations  
Phone (direct) **+61 3 9608 2273**  
Mobile **+61 422 844 982**  
Email [m.alden@cornwalls.com.au](mailto:m.alden@cornwalls.com.au)