

## **Part 6-4B—Workers bullied or sexually harassed at work**

### **Division 1—Introduction**

#### **789FA Guide to this Part**

This Part allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying or sexual harassment.

#### **789FB Meanings of *employee* and *employer***

In this Part, *employee* and *employer* have their ordinary meanings.

### **Division 2—Stopping workers being bullied or sexually harassed at work**

#### **789FC Application for an FWC order to stop bullying or sexual harassment**

- (1) A worker who reasonably believes that he or she has been bullied or sexually harassed at work may apply to the FWC for an order under section 789FF.
- (2) For the purposes of this Part, *worker* has the same meaning as in the *Work Health and Safety Act 2011*, but does not include a member of the Defence Force.

Note: Broadly, for the purposes of the *Work Health and Safety Act 2011*, a worker is an individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer.

- (3) The application must be accompanied by any fee prescribed by the regulations.
- (4) The regulations may prescribe:
  - (a) a fee for making an application to the FWC under this section; and
  - (b) a method for indexing the fee; and
  - (c) the circumstances in which all or part of the fee may be waived or refunded.

#### **789FD When is a worker bullied at work or *sexually harassed at work*?**

- (1) A worker is **bullied** if:
  - (a) while the worker is at work in a constitutionally-covered business:
    - (i) an individual; or
    - (ii) a group of individuals;  
repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and
  - (b) that behaviour creates a risk to health and safety.
- (2) To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.

- (2A) A worker is ***sexually harassed at work*** if, while the worker is at work in a constitutionally-covered business, one or more individuals sexually harasses the worker.
- (3) If a person conducts a business or undertaking (within the meaning of the Work Health and Safety Act 2011) and either:
- (a) the person is:
    - (i) a constitutional corporation; or
    - (ii) the Commonwealth; or
    - (iii) a Commonwealth authority; or
    - (iv) a body corporate incorporated in a Territory; or
  - (b) the business or undertaking is conducted principally in a Territory or Commonwealth place;
- then the business or undertaking is a **constitutionally-covered business**.

#### **789FE FWC to deal with applications promptly**

- (1) The FWC must start to deal with an application under section 789FC within 14 days after the application is made.

Note: For example, the FWC may start to inform itself of the matter under section 590, it may decide to conduct a conference under section 592, or it may decide to hold a hearing under section 593.

- (2) However, the FWC may dismiss an application under section 789FC if the FWC considers that the application might involve matters that relate to:
- (a) Australia's defence; or
  - (b) Australia's national security; or
  - (c) an existing or future covert operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police; or
  - (d) an existing or future international operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police.

Note: For another power of the FWC to dismiss applications under section 789FC, see section 587.

#### **789FF FWC may make orders to stop bullying or sexual harassment**

- (1) If:
- (a) a worker has made an application under section 789FC; and
  - (b) either or both of the following apply:
    - (i) the FWC is satisfied that the worker has been bullied at work by an individual or a group of individuals, and the FWC is satisfied that there is a risk that the worker will continue to be bullied at work by the individual or group;
    - (ii) the FWC is satisfied that the worker has been sexually harassed at work by one or more individuals, and the FWC is satisfied that there is a risk that the worker will continue to be sexually harassed at work by the individual or individuals;
- then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to:
- (c) if subparagraph (b)(i) applies—prevent the worker from being bullied at work by the individual or group; or

- (d) if subparagraph (b)(ii) applies—prevent the worker from being sexually harassed at work by the individual or individuals; or
- (e) if subparagraphs (b)(i) and (ii) apply:
  - (i) prevent the worker from being bullied at work by the individual or group; and
  - (ii) prevent the worker from being sexually harassed at work by the individual or individuals.

- (2) In considering the terms of an order, the FWC must take into account:
  - (a) if the FWC is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body—those outcomes; and
  - (b) if the FWC is aware of any procedure available to the worker to resolve grievances or disputes—that procedure; and
  - (c) if the FWC is aware of any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes—those outcomes; and
  - (d) any matters that the FWC considers relevant.

### **789FG Contravening an order to stop bullying or sexual harassment**

A person to whom an order under section 789FF applies must not contravene a term of the order.

Note: This section is a civil remedy provision (see Part 4-1).