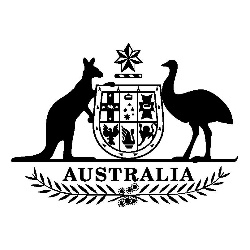
**NEW WORKPLACE HARASSMENT LAW IN AUSTRALIA**

On January 1, 2014, there will be new law in effect in Australia as part of the Fair Work Act to take reasonable steps to prevent workplace harassment and bullying. It is essential that an organisation has an effective workplace bullying policy which includes:

1. a definition of workplace bullying, including a statement that workplace bullying is unlawful;
2. a complaints process; and
3. information about the consequences for a worker who has engaged in workplace bullying.

See more at: http://www.probonoaustralia.com.au/news/2013/10/new-workplace-bullying-laws-and-how-they-affect-nfps#sthash.VLYUmrd1.dpuf

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**Work Health and Safety (WHS) Act 2011**

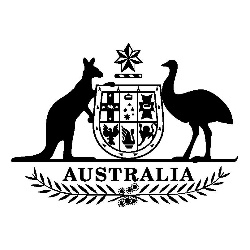
Visit the Work Health and Safety (WHS) Act 2011

<http://www.comlaw.gov.au/Details/C2011A00137>

Download the Work Health and Safety (WHS) Act 2011

<http://www.comlaw.gov.au/Details/C2011A00137/Download>

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**Fair Work Amendment Act 2013**

Visit the Fair Work Amendment Act 2013

<http://www.comlaw.gov.au/Details/C2013A00073>

Download the Fair Work Amendment Act 2013

<http://www.comlaw.gov.au/Details/C2013A00073/Download>

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**Fair Work Commission**

<http://www.fwc.gov.au/index.cfm?pagename=anti-bullying>

**Safe Work Australia**

<http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/guide-workplace-bullying>

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**How does this impact corporate officers?** *(Section 27 of WHS Act 2011, interpretation source: Safe Work Australia)*

Download the Guide to preventing and responding to workplace bullying (Interpretive Guideline, Safe Work Australia)

<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/827/Guide-preventing-responding-workplace-bullying.pdf>

Download the FWC Guide to Anti-Bullying (PDF)

<http://www.fwc.gov.au/documents/antibullying/Guide_antibullying.pdf>

Officers, such as company directors, must exercise due diligence to ensure the business or undertaking complies with the WHS Act and Regulations. This includes taking reasonable steps to ensure the business or undertaking has and uses appropriate resources and processes to eliminate or minimise risks associated with workplace bullying.

**What must the corporate officers do to comply?** *(Section 27 of WHS Act 2011, interpretation source: Safe Work Australia)*

Download The Health and Safety of an Officer Under Section 27 (Interpretive Guideline, Safe Work Australia)

<http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/605/Interpretive%20guideline%20-%20Officer.pdf>

The health and safety duty of an officer requires them to exercise due diligence to ensure compliance by the Person Conducting a Business or Undertaking (PCBU) with its health and safety obligations.

An officer must ensure that the PCBU has in place appropriate systems of work and must actively monitor and evaluate health and safety management. An officer’s duty is aimed at achieving and sustaining compliance by the PCBU, which may not occur without the active involvement of its officers.

Section 27(5) of the WHS Act 2011 provides that due diligence requires an officer to take reasonable steps:

1. to acquire and keep up-to-date knowledge of work health and safety matters *(for example, what the WHS Act requires and the strategies and processes for elimination or minimisation of hazards and risks so far as is reasonably practicable)*;
2. to gain an understanding of the nature of the operations of the business or undertaking of the person conducting the business or undertaking and generally of the hazards and risks associated with those operations *(advice from a suitably qualified person may be required to gain a general understanding of the hazards and risks associated with the operations of the business or undertaking)*
3. **to ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking *(this requires an understanding of what is needed for health and safety, making decisions about procedures and resources and ensuring that they are used)*;**
4. **to ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; *(this should include the reporting of incidents and emerging hazards and risks, identifying if any further action is required to eliminate or minimise the hazards or risks so far as is reasonably practicable and ensuring steps are taken by the PCBU to take reasonably practicable steps)*;**
5. to ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; *(the section provides examples which are noted below – other examples include that the PCBU complies with licensing and registration obligations, union right of entry requirements and the duty to consult, co-operate and co-ordinate activities with other duty-holders)*;
6. to verify the provision and use of the resources and processes referred to in paragraphs 3 to 5 *(this makes it clear that ‘ensure’ means active verification, for example through inspection or auditing processes, that the resources and processes are in place and are being used)*.

Examples of a PCBU’s duties or obligations which are specified in section 27(5)(e) of the WHS Act for paragraph 5 above are:

* reporting notifiable incidents;
* consulting with workers;
* ensuring compliance with notices issued under the WHS Act;
* ensuring the provision of training and instruction to workers about work health and
* safety; and
* ensuring that health and safety representatives receive their entitlements to training.

This list is not meant to be exhaustive. There may be other things required for an officer to show that they have exercised due diligence in the particular circumstances. For example, an officer could not be said to be exercising due diligence to ensure compliance by the PCBU with its duties under the WHS Act, if the officer did not take action to ensure that significant issues with the health and safety performance of a contractor, of which they were aware, were properly addressed.

**What is the penalty?**

If an organisation does not comply with the Fair Work Commission's order, it is looking at a maximum penalty of $51,000. Individuals involved in breaching the orders such as managers and directors could also be penalised. –

See more at: <http://www.probonoaustralia.com.au/news/2013/10/new-workplace-bullying-laws-and-how-they-affect-nfps#sthash.VLYUmrd1.sIZBHHFc.dpuf>

**A worker includes:** *(source, FWC)*

* an employee
* a contractor or subcontractor
* an employee of a contractor or subcontractor
* an employee of a labour hire company who has been assigned to work in a particular
* business or organisation
* an outworker
* an apprentice or trainee
* a student gaining work experience
* a volunteer

**What are the business impacts of workplace bullying?** *(source: Safe Work Australia)*

Workplace bullying can also have a negative impact on the work environment, damage the reputation of a business and can lead to:

* high staff turnover and associated recruitment and training costs
* low morale and motivation
* increased absenteeism
* lost productivity
* disruption to work when complex complaints are being investigated
* costly workers’ compensation claims or legal action.

**Who is covered by these anti-bullying laws?** *(source, FWC)*

Workers are only covered by the national anti-bullying laws if they are at work in a

‘constitutionally-covered business’. This includes a business or undertaking conducted by:

* a constitutional corporation—for example, a proprietary limited company or an incorporated
* association conducting trading or financial operations (this includes foreign corporations
* formed within the limits of the Commonwealth)
* the Commonwealth or a Commonwealth authority
* a body corporate incorporated in a Territory
* a business or organisation principally in a Territory or Commonwealth place.

**Who is not covered by these anti-bullying laws?** *(source, FWC)*

Workers are only covered by the national anti-bullying laws if the bullying occurs while they are

at work in a constitutionally-covered business. Businesses that are not constitutionally-covered

may include businesses or undertakings conducted by:

* sole traders or partnerships
* state government departments and some state public sector agencies
* some local government organisations
* corporations whose main activity is not trading or financial
* Members of the Defence Force are not covered by these laws

IMPLICATIONS AND IMPLEMENTATION

Source: <http://www.corrs.com.au/publications/corrs-in-brief/fair-work-act-amendments-passed-by-parliament-with-delayed-start-up-for-anti-bullying-provisions/>

The new anti-bullying jurisdiction of the FWC has the greatest potential impact on employers of all the changes introduced by the Amendment Act. Significant resources were allocated to the FWC in the recent federal Budget to enable it to deal with bullying claims, with the tribunal reportedly expecting around 3,500 claims per year.

However, given the six-month delay in the commencement of the anti-bullying jurisdiction, employers have some time in which to take steps to prepare, for example by:

* reviewing and, if necessary, updating policies and procedures that are to be used for dealing with bullying complaints (including considering whether procedures should be amended to reflect the ability to bring a bullying complaint in the FWC); and
* ensuring that managers, staff and contractors are properly trained in relation to managing bullying issues and applicable policies and procedures.

Ahead of the commencement of the remaining provisions of the Amendment Act, employers should:

* review relevant workplace policies, and possibly also employment contracts, in light of the changes to various aspects of parental leave and the extension of the right to request flexible work to a much wider range of employees;
* monitor developments relating to new award provisions requiring consultation over changes to rosters and working hours – and be prepared to respond to claims for clauses dealing with these issues in new enterprise agreements;
* identify a preferred location within the workplace where union permit-holders exercising entry rights can hold meetings with employees, and attempt to reach agreement with the relevant union(s) on this issue; and
* where the employer operates in remote locations, consider how union requests for transport or accommodation assistance to facilitate access will be dealt with, and implement processes to ensure timely cost-recovery from the union(s) for providing such assistance.

Finally, once the relevant provisions take effect, employers should consider (on a case-by-case basis) whether they would be prepared to agree to arbitration by the FWC of general protections dismissal claims/unlawful arbitration claims – taking into account that when the FWC issues a certificate following unsuccessful conciliation, it will be able to indicate whether the claim has no reasonable prospect of success.

[1] See Fair Work Amendment Bill 2013 introduced into parliament

[2] The relevant provisions of the Bill, inserting new Part 6-4B in the FW Act, were examined more closely in our previous In Brief, Fair Work Amendment Bill 2013 introduced into parliament

Article:

<http://www.theaustralian.com.au/national-affairs/bosses-have-work-cut-out-for-them-preparing-for-bullying-laws/story-fn717l4s-1226777238636>