



FairWork  
Commission

# Preventing bullying at work

## Fair Work Commission insights & resources

Deputy President Kovacic

Mental Health Community of Practice

6 December 2019



# Some key points about the jurisdiction

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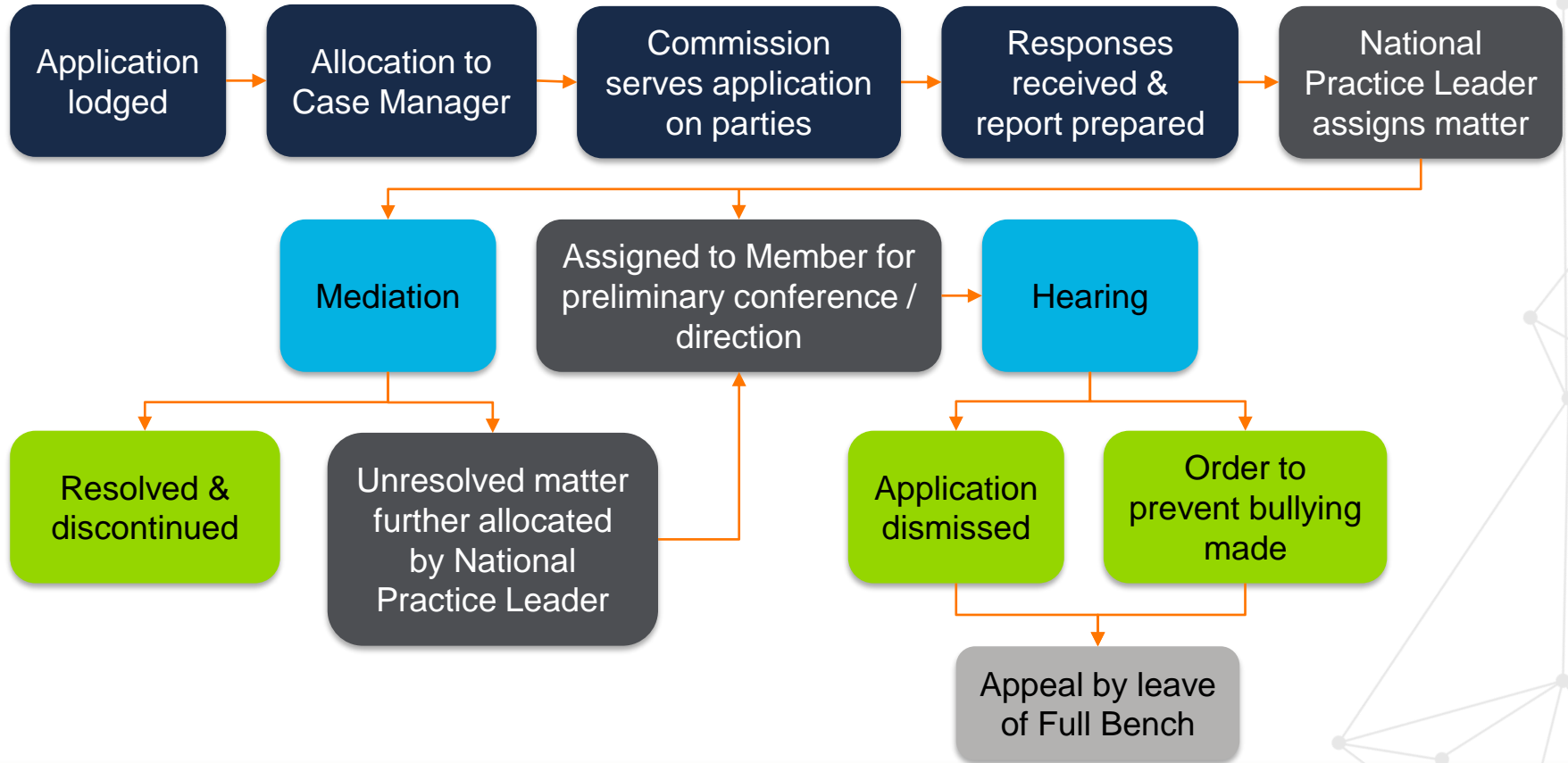
- 
- What is bullying at work?
  - Definition of ‘a worker’
  - Definition of ‘at work’
  - What is reasonable management action?



# Commission Process

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# Dealing with applications



# Approach of the Commission

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- Personalised telephone contact to:
  - explain the process
  - seek information about the risk to the applicant's health
  - advise when application is going to be served on employer and any other individual named
- Staff also trained in mental health issues to:
  - provide referrals for health and wellbeing
  - deal with threats of self-harm or harm to others

# Next steps

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## Mediation

An informal, confidential, voluntary process

## Preliminary conference

Used to assist parties in how to proceed in the workplace

## Conference

More informal than a hearing and conducted in private

## Hearing

A formal proceeding

# What the Commission can and can't do

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Making an application does not stop actions taking place in a workplace

Commission cannot investigate

Commission's power is essentially preventative

This includes meetings for performance or other matters

Preliminary issues may be dealt with by interim orders



# Orders and remedies

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Requiring the individual or group to stop the behaviour

Regular monitoring of behaviours by an employer

The provision of information, additional support and training to workers

Review of the employer's bullying policy

Compliance with an employer's bullying policy



# Commission Resources

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# Workplace Advice Service

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## Access to justice:

- Workplace Advice Clinics
- Pro bono
- other new initiatives



Free Legal advice available throughout the application lifespan to applicants, named individuals and respondents at varying stages, depending on the application type.

**Fair Work Commission**  
Australia's national workplace relations tribunal

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Awards & agreements | Cases, decisions & orders | Registered organisations | Resources | Termination of employment | Disputes at work

Home > Disputes at work

**Disputes at work**

- Fairness in the workplace
- Resolving issues at the Commission
- General protections (unlawful actions)
- Anti-bullying**
  - Where to get help about bullying
  - Who can apply?
  - What is the process?
  - Anti-bullying – Am I eligible to apply?
  - Forms & fees
  - Glossary
- New Approaches
- Industrial action
- Awards & enterprise agreements disputes
- Disputes about entry
- How the Commission works

## Anti-bullying

Print this page

**On this page**

- [Introduction](#)
- [What is bullying at work?](#)
- [What is reasonable management action?](#)

### Introduction

A worker in a constitutionally covered business who reasonably believes that he or she has been bullied at work can apply to the Work Commission for an order to stop the bullying.

This section of our website contains information about:

- what **bullying at work** is
- who can apply for an order to stop bullying at work, and
- the process to follow.

**Video: The Fair Work Commission's role in stopping bullying**

The following video provides a general overview of the Fair Work Commission's anti-bullying jurisdiction including key definitions of how the Commission may deal with an application and what an order to stop bullying is.

1 The Fair Work Commission's role in st...

Part 3—What is workplace bullying?  
Definition of bullying

## Part 3—What is workplace bullying?

### Definition of bullying

See Fair Work Act s.789FD(1)

Workplace bullying occurs when:

- an individual or group of individuals repeatedly behaves unreasonably towards a worker or a group of workers at work,

**AND**

- the behaviour creates a risk to health and safety.<sup>1</sup>

Reasonable management action conducted in a reasonable manner does not constitute workplace bullying.<sup>2</sup>

**Related information**

- What does 'Reasonable management action carried out in a reasonable manner' mean?

### Examples of bullying

Depending on the nature and context of the conduct, bullying behaviours can include:

- the making of vexatious allegations against a worker
- spreading rude and/or inaccurate rumours about an individual, and
- conducting an investigation in a grossly unfair manner.<sup>3</sup>

In *Amie Mac v Bank of Queensland Limited and Others*<sup>4</sup> the Commission indicated that some of the features which might be expected to be found in a course of repeated unreasonable behaviour constituting bullying at work were:

- ...intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination.

The following behaviours could also be considered as bullying, based on cases heard in other jurisdictions:

- aggressive and intimidating conduct<sup>5</sup>
- belittling or humiliating comments<sup>6</sup>

<sup>1</sup> Fair Work Act s.789FD(1).  
<sup>2</sup> Fair Work Act s.789FD(2).  
<sup>3</sup> Re Ms SR [2014]FWC 2108 (Hampton C, 12 May 2014) at para. 105.  
<sup>4</sup> [2015] FWC 274 (Watcher VP, 13 February 2015) at para. 99.  
<sup>5</sup> *Naidu v Group 4 Securitas Pty Ltd* [2005]NIWFK 518 (24 June 2005).

Published 28 March 2018 [www.fwc.gov.au](http://www.fwc.gov.au) 15/126

The screenshot shows the Fair Work Commission website. At the top, there is a search bar with the text "Enter a keyword, phrase or topic to begin...". Below the search bar is a navigation menu with categories: Awards & agreements, Cases, decisions & orders, Registered organisations, Resources, Termination of employment, and Disputes at work. The "Disputes at work" category is selected, and the page title is "Anti-bullying – Am I eligible to apply?". The main content area includes a sub-header "Anti-bullying – Am I eligible to apply?", a brief description of the application process, a "Print this page" button, and a "Last updated" section dated 15 February 2017. There are also social media icons for Facebook, Google+, and Twitter, and a "Page feedback" section with "Yes" and "No" buttons.

The document is a guide titled "Anti-bullying jurisdiction" from the Fair Work Commission. It is divided into two main sections: "1. About the jurisdiction" and "2. About bullying at work".

**1. About the jurisdiction**  
 The Fair Work Commission (the Commission) has powers to make orders to prevent bullying at work. These powers come from the Fair Work Act 2009 and are triggered by an application from a worker who reasonably believes that they have been bullied at work.  
 The focus of the jurisdiction is to address complaints of bullying in the workplace quickly, so that further bullying can be prevented and people can resume mutually safe and productive working relationships.  
 The Commission is a tribunal and deals with applications for orders to stop bullying by conducting conferences or hearings. It can also help parties reach an agreed resolution to issues of bullying together, through mediation or conciliation.  
 In cases where positive measures have already been put in place to resolve complaints of bullying, the Commission may find that orders to stop bullying are not required.  
 In cases where a risk of bullying remains, the Commission can make orders to prevent future bullying behaviour from occurring in the workplace concerned.

**2. About bullying at work**  
**What is bullying at work?**  
 The Fair Work Act 2009 specifies that bullying occurs when two criteria are met:

- a person or a group of people repeatedly behaves unreasonably towards a worker or a group of workers at work

AND

- the behaviour creates a risk to health and safety.

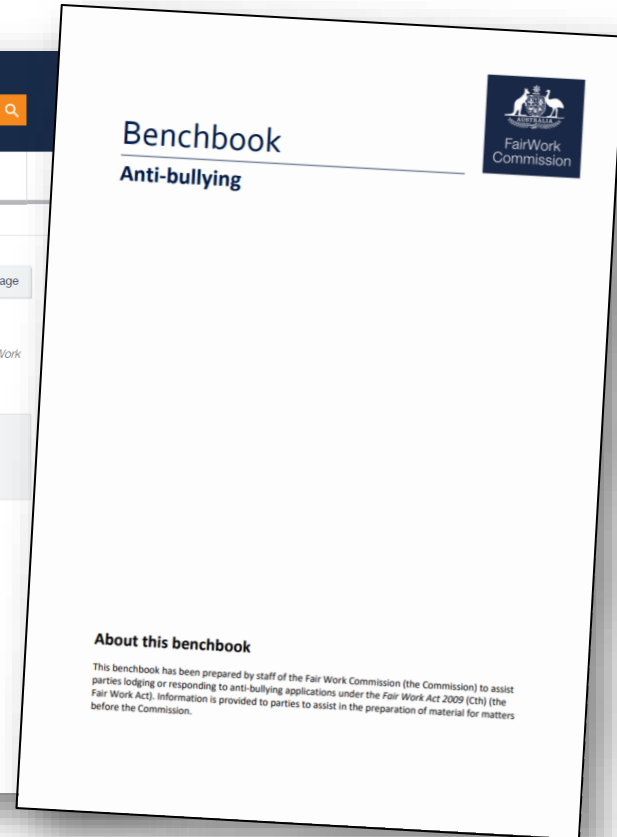
This behavior must occur repeatedly – that is, more than once – and must create a risk to health and safety in order for it to be considered bullying.

Bullying does not include reasonable management action carried out in a reasonable manner. Bullying behaviour may involve, for example, any of the following types of unreasonable behaviour:

- aggressive or intimidating conduct
- belittling or humiliating comments
- spreading malicious rumours
- teasing, practical jokes or 'inflation ceremonies'
- exclusion from work-related events

Published 19 November 2016  
 www.fwc.gov.au  
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The screenshot shows the Fair Work Commission website. The header includes the logo and the text "Fair Work Commission Australia's national workplace relations tribunal". There are search options for "Search our website" and "Search documents". A navigation menu includes "Awards & agreements", "Cases, decisions & orders", "Registered organisations", "Resources" (highlighted), "Termination of employment", and "Disputes at work". The breadcrumb trail is "Home > Resources > Benchbooks". The left sidebar lists various resources, with "Anti-bullying benchbook" highlighted. The main content area is titled "Anti-bullying benchbook" and includes a "Print this page" button. The text describes the benchbook's purpose and provides a list of links: "Read the Anti-bullying benchbook online", "Download the Anti-bullying benchbook (PDF)", "Find out How to use the benchbooks", and "Read the Disclaimer". A "Quick links" section follows, with sub-sections for "General" and "Employer or principal", each containing several links.





Questions?

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