

New Anti-Bullying & Right of Entry Laws

Workplace Relations & Safety Update

New anti-bullying and right of entry laws commenced on 1 January 2014.

The requirement to comply with these measures extends to all organisations which are 'constitutionally covered'. Generally speaking this includes all Pty Ltd companies.

Anti-bullying laws

The new anti-bullying laws allow "workers" who reasonably believe they have been bullied at work to apply to the Fair Work Commission ("FWC") for an order to stop the bullying. "Workers" are defined to include not just employees, but also contractors, subcontractors, work experience students and volunteers.

The new laws do not create an offence of bullying in the workplace. Instead, the *Fair Work Act 2009* (Cth) ("FW Act") identifies actions and behaviours that may constitute workplace bullying and provides for the FWC to make orders directed at stopping that behaviour.

The FW Act provides that a worker is "bullied at work" if an individual (or group of individuals) "repeatedly behaves unreasonably" towards the worker and that behaviour creates a risk to the health and safety of the worker. The definition expressly excludes reasonable management action carried out in a reasonable manner. However, "reasonable management behaviour" is not defined.

Powers of the Fair Work Commission

The new provisions require the FWC to start dealing with a bullying complaint within 14 days of receiving an application. The FWC has the power to require an employer to provide it with documents, including any internal anti-bullying processes, and information about any management action that may have been taken. The FWC also has the power to convene a conference between the parties or hold a formal hearing.

Who does this affect?

- All national system employees and national system employers

Article Highlights

- New anti-bullying and right of entry laws commenced on 1 January 2014.
- FWC may make an order to stop bullying behaviour towards "workers".
- Lunch rooms to be the default location for discussions when exercising right of entry powers.



If the FWC is satisfied that the worker has been bullied, and there is a risk that the worker will continue to be bullied, it may make an order preventing bullying. However, the FWC cannot order reinstatement or the payment of compensation. Furthermore, an individual cannot be subject to criminal or civil sanctions as a result of an application unless that person fails to comply with an order made by the FWC.

If a person fails to comply with an order a penalty may apply. The maximum penalty is \$10,200 for an individual or \$51,000 for a corporation, per breach.

The FWC has created an [anti-bullying benchbook](#) designed to assist parties with lodging or responding to anti-bullying applications.

Right of entry laws

Right of entry provisions under the FW Act also changed as of 1 January 2014, particularly with respect to the location of discussions and interviews, and transport and accommodation arrangements in remote areas.

Discussions and interviews

The amendments about location of discussions and interviews are aimed at encouraging occupiers and permit holders to reach an agreement about where meetings will be conducted. In the absence of agreement, the discussions and interviews will be held in the ordinary lunch or break rooms provided by the occupier. This is a significant change to the old provisions which provided an employer with the right to determine the location of meetings as long as such directions were reasonable.

However, an employer still retains the right to give reasonable instruction to permit holders regarding the route to be taken when proceeding to the meeting (where the reason for entry does not involve safety concerns).

Frequency of visits

The FWC now has the power to deal with disputes concerning the frequency with which a permit holder exercises the right of entry. This will be beneficial to those businesses where the frequency of entry is causing an unreasonable diversion of critical resources, and provides a mechanism to prevent a business from having to go to unreasonable lengths to accommodate right of entry.

Accommodation arrangements in remote areas

Some of the more controversial amendments to the FW Act concern the obligation of employers operating sites in remote areas to make accommodation and transport arrangements for permit holders seeking to exercise a right of entry at those sites.

The new laws require an employer, upon certain conditions being met (e.g. reasonable advance notice being given), to provide accommodation and transport where such provision would not cause undue inconvenience.



An employer will be limited to charging a permit holder a fee that is no more than the cost of providing the accommodation or transport.

Are the new laws subject to change?

Although the anti-bullying amendments to the FW Act were enacted by the previous Labour government, the current Coalition government has said that it will retain them subject to proposed variations. The Coalition government proposes that:

- before applying for an order to stop bullying, a worker ought to first seek preliminary help, advice or assistance from an independent regulator; and
- the new anti-bullying laws should be expanded to include union officials and their conduct towards managers, employers and workers.

Amendments to the new right of entry provisions have been flagged by the Coalition government as a priority with an intention to turn back the clock and re-introduce right of entry provisions modelled on the previous Howard government's *Workplace Relations Act*.

How to prepare for the new laws

These provisions are another reason why businesses ought to review their internal processes for dealing with bullying and right of entry.

Employers can benefit greatly from developing and implementing a clear anti-bullying policy that ensures that any allegation of bullying is promptly dealt with before it has a chance to negatively impact on a worker's health and wellbeing or on the other individuals within the organisation.

Employers may wish to deal with the new right of entry laws by creating a checklist or procedural manual for senior employees to manage union officials wanting to enter company premises on industrial or health and safety grounds.

After developing these policies and manuals it is crucial for employers to take active steps to inform and educate employees about them, to ensure that they are followed.

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