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# Australia's National Anti-Bullying Jurisdiction: Paper Tiger or Velvet Glove

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**Abstract:** Australia's innovative national anti-bullying legislation came into effect on 1 January 2014, against a backdrop of fear and resistance on the part of some conservative politicians and other stakeholder opponents. This paper contributes to an understanding of the efficacy and value of this fledgling jurisdiction or its lack thereof. In it, we describe the beginnings of the anti-bullying regime, outline the new legislative provisions, explore whether the inaction of the first six months has continued, examine the statistics arising from the jurisdiction's first 15 months of operation, and review the case law development over its first 18 months. We ask whether the anti-bullying jurisdiction is proving to be a paper tiger in an empty suit or iron fist in a velvet glove.

**Keywords:** bullying; workplace; Australia anti-bullying legislation

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## 1. Introduction

Workplace bullying is a significant problem in Australian workplaces. The Productivity Commission estimates the annual cost of workplace bullying to Australia's economy at between \$6–\$36 billion dollars [1]. Early in 2012, recognizing the significance of this issue to Australian society, workers, and workplaces, and also mindful of the national work health and safety (WHS) legislation harmonization project (which acknowledges that WHS legislation is the primary means for regulating the risks of workplace bullying) [1], the Australian House of Representatives Standing Committee on Education and Employment (the AHRSC) inquired into, and reported on bullying in Australian workplaces [2]. Following the Committee's report (*Workplace Bullying: We just want it to stop*) in October 2012 as well as the issue of an earlier report of the Fair Work Act Review Panel (*Towards more productive and equitable workplaces: An evaluation of the fair work legislation*), the *Fair Work Act 2009* (Cth) (the FW Act) was amended to introduce a novel and innovative anti-bullying regime into Australia's legal landscape.

The new regime commenced on 1 January 2014, in the face of significant opposition from some employers, industry, and conservative (Coalition) politicians. It gave the majority of individual Australian workers who were bullied at work a right to seek recourse via Australia's prime national workplace relations regulator, the Fair Work Commission (FWC). The anti-bullying legislation provided a new and alternative mechanism to remedy workplace bullying. Prior to the introduction of these measures, targets (those who experience bullying) were necessarily restricted to best fitting the circumstances of their case to an appropriate common law or statutory, civil or criminal law cause of action [3].

The new regime promised much, but has it really delivered? By 30 June 2014, FWC had received 103,500 enquiries about the new regimen, either via its website or by telephone [4]. However, only 343 of those enquiries translated into formal applications to the FWC for anti-bullying orders. Of these applications, 197 were finalised, including by withdrawal (57%), by resolution (32%), and by determination (11%). Of those matters finalised by determination, 95% were dismissed and one (consensual) anti-bullying order was made.

Were the doubters and fearmongers justified in their derision of this creative solution to an endemic problem or have they been proven wrong? In this paper, we review the journey to the introduction of Australia's new anti-bullying jurisdiction, outline the new legislative provisions, examine the statistics arising from the jurisdiction's first 15 months of operation, and examine the case law development for the first 18 months with a view to understanding its value or lack thereof. Is it proving to be a paper tiger in an empty suit or an iron fist in a velvet glove?

## 2. Antecedents to the Reform: Hearing the Voices of the Bullied and Other Stakeholders

Between July and September 2012, AHRSCCE consulted with a diverse range of witnesses including individuals, unions, employers, academics, industry, lawyers and psychologists. Representatives from state, territory and federal governments were also consulted ([5], pp. 211–26). Both confidential and public submissions were received from 319 individuals and organizations ([5], pp. 195–207). The final report of AHRSCCE's inquiry, which was called *Workplace Bullying: We just want it to stop* (the Report) was issued in October 2012. The Report included 23 recommendations, the first and last of which, are for present purposes, perhaps the most significant. Recommendation 1 was the promotion of a national definition of bullying: "workplace bullying is repeated, unreasonable behavior directed towards a worker or group of workers that creates a risk to health and safety" ([5], p. xix). Recommendation 23 was that the Commonwealth should implement arrangements to allow a right of recourse and remedy to individual targets of workplace bullying ([5], p. xxiv).

The Report acknowledged that the Commonwealth has had overall responsibility for a national workplace relations system since 1 January 2010. Under the FW Act the national industrial relations system covers most (but not all) Australian workers and workplaces ([5], p. 57). A number of submissions supported the introduction of a specific civil right of recourse for workplace bullying under the FW Act. These submissions reflected the FWC's already extensive coverage of Australian workers. They also recognized the FWC's role and experience in facilitating timely and effective dispute resolution, including resolving bullying claims made via unfair dismissal and adverse actions applications ([5], pp. 186–87).

The AHRSCCE's Coalition members issued a dissenting report rejecting the suggestion that workplace bullying was "normal". They were particularly opposed to Recommendation 23, which supported a right of individual recourse ([5], pp. 228–29). The concerns about providing an individual cause of action to targets was rooted in a fear that individual recourse to "retributive" action would not achieve justice, and would open the door to potential abuse, "frivolous actions", or "even worse, actions driven by a malicious intent". Such actions could "tie employers up in rolling court actions for extended periods". Arguably, these fears were misplaced given the reality that targets already had access to a range of individual remedies, which could be used successfully to address workplace bullying [3]. Nevertheless, Coalition members were fearful that anti-bullying "outcomes are far less likely to be satisfactory in practice than in theory" ([5], pp. 231–32). Despite the misgivings of these politicians and other stakeholders, a bill amending the FW Act to introduce anti-bullying measures (as well as reforms in six other broad areas including the expansion of family-friendly provisions) was introduced into the Australian Parliament.

## 3. Legislating a National Anti-Bullying Regime

The Bill proposed allowing a bullied worker to apply to the FWC for an order to stop the bullying. It provided the FWC with the ability to make any order it considered appropriate (other than a pecuniary one) to stop the bullying. It could also refer matters to the appropriate WHS regulator, e.g., WorkSafe ACT or WorkCover NSW. The proposed individual right would co-exist with actions available under WHS laws. The bill's Explanatory Memorandum (EM) also provided that anti-bullying orders could apply to others, such as co-workers and workplace visitors ([6], pp. 23–24) which was in line with the harmonized national WHS laws.

After the bill was drafted, on 21 March 2013, AHRSCCE (the Committee) referred it for inquiry and report ([6], p. 1). Forty-one submissions were received and a public hearing was held in Melbourne ([6], p. 1). The Committee's subsequent report, Advisory Report: Fair Work Amendment Bill 2013 (the Advisory Report) was delivered in June 2013. Perhaps not surprisingly, the Advisory Report noted that the proposed anti-bullying amendments to the FW Act were enthusiastically supported by a number of employee representative organizations, community legal centers, and a state law society, while business and employer organizations were either reserved in their support or clearly opposed to the proposed anti-bullying measures ([6], pp. 26–27). A number of opponents suggested that workplace bullying should remain firmly within the WHS space and that concurrent anti-bullying jurisdictions (under WHS laws and the FW Act) would only “encourage forum shopping” ([6], p. 28). This claim was made, even though the WHS jurisdiction appears to have been little used by targets of workplace bullying. However, the Department of Education, Employment and Workplace Relations (DEEWR) noted in response to the claim that:

The provisions are designed to complement, not replace, existing work health and safety obligations and the work done by work health and safety regulators. A person can make an application to both the Fair Work Commission and the relevant work health and safety regulator at the same time in keeping with the different process and outcomes available in each jurisdiction. The Fair Work Commission is working closely with work health and safety regulators on protocols to inform its handling of applications. ([6], p. 29)

Concerns were also expressed about the fact that WHS laws fall within the residual powers of State governments under the Australian Constitution. This gave rise to a question about whether the Australian Government could secure constitutional authority to legislate on workplace bullying simply by redefining it as an industrial relations “matter” rather than as a WHS matter ([6], p. 29). DEEWR responded by observing that the Commonwealth's powers in this regard are well established and essentially rely on the same laws that have underpinned Australia's national workplace relations law since the Work Choices case ([6], p. 30).

A number of submissions to the Committee highlighted the fact that the FWC was not currently resourced or was inadequately experienced to meet the requirements of the proposed new anti-bullying jurisdiction. This costing concern was also highlighted by the FWC during Senate Estimates on 13 February 2013 ([7], p. 26). Conservative Senator Abetz responded “You [the FWC] would not be in a position to absorb the cost. So we had the great announcement but no announcement about funding. I do not expect you to comment on that. But thank you; that is very helpful. It is another government thought bubble, Parliamentary Secretary, without any money underpinning it” ([7], p. 25). Ultimately, the FWC was allocated \$21.4 million over four years in the 2013–2014 Federal Budget to provide a legal remedy for victims of workplace bullying. These funds would be used by the FWC to work with relevant parties to resolve complaints of workplace bullying [7,8]. Presumably, the budget allocation was intended to be used to train FWC staff to implement the new regime and also to recruit more FWC staff. The FWC was already under-resourced and working to capacity.

Despite the extensive national consultations undertaken by the Committee and DEEWR, employer groups still complained that they had not been consulted about the proposed new anti-bullying jurisdiction. They commented along the lines of “There has been a pitiful lack of consultation with the States ahead of these amendments and the Government has foisted this proposal on the FWC without regard for whether or not it is either resourced or capable of managing a bullying jurisdiction” and suggested that “The best way forward is not to progress . . . these proposals until all stakeholders and the social partners consider how best to progress.” ([6], p. 34).

Through the Advisory Report, the Committee made a single recommendation: that the House of Representatives pass the Fair Work Amendment Bill 2013 ([6], p. x). Again, AHRSCCE's Coalition members prepared a dissenting report opposing the government members' recommendation that the bill be passed. The dissenting report noted that “the government seems intent on passing in the dying days of the 43rd parliament . . . significant changes to the industrial system and as there is little

likelihood of any of the provisions being implemented [before the election] its passage should not be considered until after the election" ([6], p. 81). The Coalition committee members also noted that while the *Workplace Bullying: We just want it to stop* report made 23 recommendations, the bill only picked up Recommendation 23 which called for an unspecified individual right of recourse. They argued that workplace bullying was already addressed under WHS legislation and reiterated their concerns that the bill proposed an alternative forum for these issues to be pursued ([6], pp. 83–84).

Despite the concerns expressed by the Committee's Coalition members, including fear that a new anti-bullying regime housed within the FWC would open the litigation floodgates to frivolous or malicious employees seeking retribution and therefore wreaking havoc on hapless employers, the bill became law and the amendments took effect from 1 January 2014.

### 3.1. The Anti-Bullying Legislative Provisions

The FW Act's anti-bullying provisions are detailed in Part 6-4B at ss 789FA-789FL. These provisions were inserted into the FW Act by the *Fair Work Amendment Act 2013* (Cth). Part 6-4B has no specific objects so the broader objects of the FW Act must be taken into account when interpreting the new provisions [9]. Section 789FC sets out who may apply to the FWC under s.789FF for an anti-bullying to prevent a worker from being bullied at work. This section provides:

- (1) A worker who *reasonably believes* he or she *has been bullied at work* may apply to the FWC for an order under section 789FF (emphasis added).
- (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.

Section 789FD addresses the question of when is a worker bullied at work. It provides:

- (1) A worker is *bullied at work* if:
  - a) *while the worker is at work* in a constitutionally-covered business: (emphasis added)
    - 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 (emphasis added)
  - b) that *behaviour creates a risk* to health and safety (emphasis added).
- (2) To avoid doubt, subsection (1) does not apply to *reasonable management action carried out in a reasonable manner* (emphasis added).
- (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*.

Section 789FE provides that the FWC must start to deal with an application under section 789FC within 14 days, and also that it may dismiss such an application if it considers that an application

might involve matters relating to Australia's defence or national security, or to existing or future covert domestic or international operations.

The scope of the FWC's power to make anti-bullying orders is set out in section 789FF, which provides (emphasis added):

FWC may make orders to stop bullying:

- (1) If:
  - a) a worker has *made an application* under section 789FC; and
  - b) the FWC is satisfied that:
    - i the worker has been *bullied at work* by an individual or a group of individuals; and
    - ii there is *a risk that the worker will continue to be bullied at work* by the individual or group;

then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work by the individual or group.

- (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;
  - b) if the FWC is aware of any procedure available to the worker to resolve grievances or disputes—that procedure;
  - 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.

The definition of “bullied at work” is central to the operation of Part 6-4B because a worker may only apply to the FWC for an order under section 789FF if they reasonably believe that they have been bullied at work (section 789FC(1)). The FWC's power to make orders to stop bullying will only be enlivened if, among other things, the FWC is satisfied that the applicant worker has been “bullied at work” (section 789FF(1)(b)) ([10], para. 11).

### 3.2. *The Approach of the Fair Work Commission*

As the agency responsible for administering the new regime, prior to 1 January 2014 the FWC consulted extensively with stakeholders and experts in workplace bullying. The FWC faced considerable challenges in gearing up for its new role. As the anti-bullying jurisdiction was the first of its kind in the world, there was no comparable jurisdiction in Australia or internationally that the FWC could look to for guidance. Therefore, it was impossible for it to accurately predict the likely number of applications following the regime's commencement. Accordingly, the Anti-Bullying Panel Head, Commissioner Hampton, observed that the regime required a new way of thinking:

We're applying different concepts . . . because this is all about preventive maintenance of employment and personal relationships—it is not about picking up the pieces after the event. Seen in that context it's a different skill set. ([11], p. 73)

Therefore, the FWC trained its Members and staff in relation to the new regime, set-up an Anti-Bullying Panel, and developed a Case Management Model, which reflected the unique nature of the new jurisdiction and the intense emotional and psychological issues that may accompany workplace bullying ([11], pp. 71–72). The FWC's approach acknowledged international research which demonstrated that dealing with workplace bullying quickly and informally produces better outcomes in terms of maintaining constructive and workable ongoing workplace relationships ([11], p. 73).

As Section 789FE provided that the FWC had to start dealing with applications within 14 days of filing it developed a streamlined process to manage applications quickly. The process included

assessing applications for completeness and validity (that is, deciding if the application fell within the FWC's jurisdiction), assessing the nature of the alleged bullying, contacting the applicant to confirm their intention to proceed, and referring the matter to the Panel Head to decide whether the matter would be referred to a Member and for what purpose, e.g., mediation or determination ([11], pp. 70–71). If a mediation was considered appropriate, it would be voluntary and confidential. The emphasis would be on resolving the issues “to enable cooperative and constructive relationships to be resumed. Monetary settlements [would] not be promoted or recommended” ([12], pp. 10–11). Where matters were not resolved by mediation (or were not considered appropriate for mediation) the anti-bullying application would be assigned to a Member for hearing and determination. Prior to this, the Member would generally convene a preliminary conference to enable a better understanding of the issues and the respective positions of the parties. The Member could try and resolve the matter by conciliation or mediation at a preliminary or resumed conference, determine that other parties should be notified or required to attend, make interim orders (if the circumstances warranted that and there was clear jurisdiction to do so), or make directions for the application to be heard ([12], pp. 10–11).

#### 4. The Initial Impact of the New Regime: The Statistics

As discussed, the FWC representatives with responsibility for dealing with anti-bullying applications were trained and “road ready” on 1 January 2014. They expected a deluge of complaints (as many as 67 per week) ([11], p. 73; [13]). In fact, so few applications (66 by the end of February 2014) were received that the FWC was able to action applications within a median time of one day, which was well below its 14-day benchmark ([11], p. 8).

By 30 June 2014, six months after the introduction of the anti-bullying regime, the FWC had received a significant number (approximately 103,500) of (website and telephone) enquiries about the new regime. If nothing else, the high level of enquiry reflected a strong public interest. However, during this same period, only 343 (or about 57 per month) anti-bullying applications were made to the FWC. In the 2014–2015 reporting period, there was a growth in enquiry levels (up by 50,000 to about 156,300). The increased enquiry rate translated to a tiny increase in applications from about 57 to 60 per month ([14], p. 104). The low translation from inquiry to application is beyond the scope of this paper but one might speculate that over time the take-up rate will increase. During 2014–2015 there were 48,242 views of the FWC's online quiz about eligibility to make an anti-bullying application (as compared to 120,535 views of the unfair dismissal and 26,158 views of general protections on-line quizzes) [14]. As both unfair dismissals and general protections applications may offer potential remedies for workplace bullying quiz views for these actions may also be indicative of workplace bullying concerns, though without more information, it is difficult to definitively make such a claim.

In the period 1 January to 30 June 2014, more than 270 anti-bullying conferences and hearings were held ([11], pp. 70–71). As mentioned earlier, of the 343 applications made in the first six months, 197 were finalized [11]. Finalization occurred by way of withdrawal of applications (113 or 57%), by resolution (63 or 32%), or by determination (21 or 11%) [11]. Of the last group, 95% of applications were dismissed ([11], p. 72) (for reasons which will be explored below) and one (consensual) anti-bullying order was made. This was the only case where the FWC determined that the worker was at risk of continued bullying [11].

During the jurisdiction's first 15 months (up to 31 March 2015) there were a total of 874 anti-bullying applications with only one order made. Table 1 shows that, of these, 685 applications were finalized; 72 were finalized by a decision, 200 were resolved during proceedings, and 413 were withdrawn. Therefore, more than half of all applications were withdrawn either before or after a conference or hearing [11].

**Table 1.** Applications to FWC and outcome, 1 January 2014–31 March 2015.

Period	1/1–31/3/14	1/4–30/6/14	1/7–30/9/14	1/10–31/12/14	1/1–31/3/15	Total
Number of applications for an order to stop bullying at work	151	192	189	169	173	874
Finalized matters						
Applications withdrawn early in case management process <sup>a</sup>	23	36	49	41	47	196
Applications withdrawn prior to proceedings (conference or hearing) <sup>b</sup>	5	29	31	25	9	119
Applications withdrawn after a Conference or Hearing and before decision	4	16	31	27	20	98
Applications resolved during the course of proceedings <sup>c</sup>	16	47	48	43	46	200
Applications finalized by a decision <sup>d</sup>	8	13	15	20	16	72
Total Matters Finalized in Period	56	141	174	156	158	685
Decision details						
Jurisdictional objection upheld—application dismissed	1	2	0	1	0	4
Application dismissed—bullying at work not found and/or no risk of bullying continuing	0	4	0	3	2	9
Application dismissed: s.587 <sup>e</sup>	6	7	15	16	14	58
Total applications dismissed	7	13	15	20	16	71
Application granted—worker at risk of continued bullying at work, order issued	1	0	0	0	0	1
Application granted—worker at risk of continued bullying at work, order yet to be issued	0	0	0	0	0	0
Application granted—worker at risk of continued bullying at work, further decision and order issued	0	0	0	0	0	0
Total applications granted	1	0	0	0	0	1
Applications finalized by a decision Australia wide	8	13	15	20	16	72
Total Matters Finalized in Period	24	39	45	60	48	216

<sup>a</sup>: Applications withdrawn with case management team or with Panel Head prior to substantive proceedings;

<sup>b</sup>: Includes matters that are withdrawn prior to a proceeding being listed; before a listed conference, hearing, mention or mediation before a Commission Member is conducted; before a listed mediation by a staff member is conducted. This also includes matters where an applicant considers the response provided by the other parties to satisfactorily deal with the application; <sup>c</sup>: Includes matters that are resolved as a result of a listed conference, hearing, mention or mediation before a Commission Member or listed mediation by a staff member;

<sup>d</sup>: Decisions made under Part 5-1 of the *Fair Work Act 2009* (Cth) are not required to be written; <sup>e</sup>: Includes matters that were not made in accordance with the Act or the applicant failed to pursue the application.

Of the 72 matters finalized by a decision, as mentioned above, only one anti-bullying order was made. Four applications were dismissed because a jurisdictional objection was upheld and nine were dismissed because no bullying was found to have occurred or because there was no risk of bullying continuing (which equates to the worker leaving the employment in which the bullying allegedly occurred). The majority (58 out of 72) of applications were dismissed under section 587 of the FW

Act, largely for procedural deficiencies and/or failure by the applicant to progress the application. Note that the review by the authors of all published anti-bullying decisions for the period 1 January 2014, to 30 June 2015, discussed in the following section, indicates that a total of 13 applicants had left their employment due to resignation or termination. In such cases, the FWC is not permitted to make an anti-bullying order because there is no risk of the (alleged) bullying behavior continuing in that workplace. The existence of such a risk is a condition precedent to the FWC exercising its anti-bullying jurisdiction.

The fact that many matters were resolved without formal proceedings is not necessarily a negative outcome. It may in fact, at least according to the FWC, be positive. In its 2013–14 annual report, the FWC noted that international research indicates that dealing with bullying early and informally produces better outcomes in terms of preserving constructive and workable ongoing workplace relationships. The FWC's approach to anti-bullying matters reflects these priorities and is different to how it deals with other types of matters. As Commissioner Hampton has observed, resolution (before determination) can be achieved more quickly, inclusively and less judgmentally than determination and "in the context of an ongoing employment or contractual relationship all of those are positives" ([11], p. 73). The FWC claims that many of the anti-bullying applications have been resolved in such a way so that the underlying issues are addressed and workplace relationships strengthened ([11], p. 73).

## 5. Early Trends: What the Published Anti-Bullying Decisions Tell Us

### 5.1. Methodology

At the outset we note that this paper relies on secondary and documented data, which may represent a weakness in our findings. Nevertheless, it draws on the substantive decisions made during the first 18 months of operation of the new statutory scheme. These decisions and the order were identified by conducting an anti-bullying decision and order (D&O) search [15] on the FWC website's decision database for the time period of 1 January 2014, to 30 June 2015. The search identified 112 separate D&Os; a number of which related to the same anti-bullying applications, e.g., separate decisions about jurisdictional objections, confidentiality orders, and final determinations in relation to a single matter.

Data from the identified D&Os were collated in tabular form under a number of headings including date of the anti-bullying application, date of the decision or order, jurisdiction, decision-maker, identity of parties, whether or not the parties had legal or other representation, whether or not conferences and/or hearings were held, the number of alleged bullies, and the outcome of the application (See Table S1). Information under each heading was not always evident from the published D&O. In addition, notes were made of certain facts and issues identified and considered significant by the authors. By way of example, note was made of decisions in which the applicant was no longer working in the workplace in which the alleged bullying had occurred, the manner of the applicant's separation, the types of procedural and other deficiencies which led to applications being dismissed, and of the efforts made by the FWC to alert applicants to the procedural and other deficiencies in their applications.

A thematic analysis of the documents revealed a number of interesting facts, including: a high proportion of procedural failings leading to the dismissal of applications; the possible use of stalling tactics; and the lack of any evidence to indicate the making of vexatious or frivolous applications. We look first at these and then explore how the evolving jurisdiction has clarified some issues, while raising other questions.

### 5.2. The Question of Procedural Failings

The majority (58 out of 72) of dismissed anti-bullying applications were dismissed for what can essentially be classified as technical reasons: e.g., the application was not accompanied by the required application fee (currently \$68.80 AUD, which is identical to the fee for unfair dismissal, general



protections (adverse actions) and unlawful termination applications) or by a fee waiver application form; the application was not completed on the prescribed form; the application was unsigned; or the application was inadequately particularized. In these situations, the FWC consistently took a number of steps to facilitate the making of a proper application, to advise the applicants of the deficiencies in their application, and to warn them that their application may be dismissed by the FWC if the deficiencies were not corrected. The FWC's steps to assist each applicant included writing to the applicant at least twice and sometimes more often in relation to these issues, as well as contacting (or attempting to) directly contact the applicant by telephone or by email on at least one occasion.

Our analysis revealed that the FWC also, on occasion, assisted applicants by referring the applicant to relevant parts of its websites for more information about the jurisdiction and applications under it (noting that the FWC is permitted to provide information and assistance but not to provide legal advice). When the applicant subsequently failed to take further action to progress his or her anti-bullying application (e.g., by paying the requisite fee, submitting a fee waiver application, providing more details, signing the form, *etc.*) the FWC would dismiss the application. Section 587(1) of the FW Act sets out the grounds for dismissal (emphasis added):

- (1) Without limiting when FWC may dismiss an application, FWC may dismiss an application if:
  - a) the application is not made in accordance with this Act; or
  - b) the application is *frivolous or vexatious*; or
  - c) the application has no reasonable prospects of success.
- (2) The FWC *may* dismiss an application:
  - a) on its own initiative; or
  - b) on application.

The applications which were dismissed under section 587 between 1 January 2014, and 31 June 2015 were either dismissed under s587(1)(a) or s587(1)(c) or for both reasons. No cases were dismissed under section 587 (1)(b). In other words, no cases were dismissed because the FWC had formed a view that the application was "frivolous or vexatious". In these early days of the new regime, this can be seen as a positive trend which gives lie to the fears of critics of the new jurisdiction that it would prove a gateway to frivolous and malicious actions that would tie employers up in court for long periods ([1], pp. 231–32). That said, where applicants who have clearly indicated an intention (by filing an application) to seek the FWC's assistance to deal with workplace bullying failed to follow-through (despite the FWC's "encouragement" to do so) we need to ask why they chose not to. Of course, there were likely some applicants who did address the deficiencies in their applications when alerted to them by the FWC, allowing the FWC was able to entertain them. Such applications would not have been dismissed under section 587 but would have continued along the FWC's case management process for conference, hearing and/or determination. However, it is not possible to identify such cases from the published D&Os.

### 5.3. The Question of Stalling Tactics

Concerns that the new jurisdiction could keep employers tied up in court ([1], pp. 231–32) may not be totally unfounded. However, the published documents suggest that anti-bullying applications may be prolonged because of the conduct of the respondent (usually the employer) rather than the conduct of the applicant (usually the employee). By way of example, respondents used a number of what may be characterized as "stalling tactics", such as asserting jurisdictional objections. These "jurisdictional" objections over the first 18 months of the anti-bullying regime have included claims that the bullying allegations pertain to conduct that occurred before 1 January 2014, that the applicant was not a "worker" for the purposes of the Act, that the employer was not a "constitutional corporation", that the applicant was no longer employed by the organization, that the alleged conduct was reasonable

management action carried out in a reasonable manner, and strike-out applications (see for example, *Kathleen McInnes* (2014) FWC 1395, *Arnold Balthazaar v Department of Human Services* (Cth) (2014) FWC 2076, *Ms SW* (2014) FWC 3288, *Mitchell Shaw v ANZ Group T/A ANZ Bank*; *Bianca Haines* (2014) FWC 3408, *Applicant v Respondents* (2014) FWC 4198, *Sharon Bowker*; *Annette Coombe*; *Stephen Zwarts v DP Works Melbourne Limited T/A DP World*; *Maritime Union of Australia, The Victorian Branch and Others* (2014) FWC FB9227.

Respondents have also delayed proceedings by seeking confidentiality orders to de-identify the parties and to prevent reputational damage, with such orders usually being opposed by the applicant. See for example *Justin Corfield* (2014) FWC 4887, *Peter Hankin v Plumbers Co-operative Ltd T/A Plumbers Supplies Co-Op*; *Ben Ridgeway*; *Simon Ballingal*; *Chris Henry*; *David Power*; *Grant Crawford*; *Stephen Wells* (2014) FWC 8402; *Amie Mac v Bank of Queensland*; *Michelle Locke*; *Matthew Thomson*; *Stacey Hester*; *Christine Van Den Heuvel*; *Jane Newman* (2015) FWC 774.

While the respondents may not agree that this sort of conduct during proceedings should be characterized as stalling, a delay in proceedings may nevertheless be the result. On a purely pragmatic level, these tactics can be viewed as a waste of resources (e.g., time and money) for all parties. If one accepts that a genuine anti-bullying application is a “cry for help” and a manifestation of the “we just want it to stop” mantra, then an employer’s failure to recognize the application as an opportunity to address the problem is both absurd and sad. By failing to constructively address the worker’s bullying concerns in a timely manner (as evidenced by challenging and delaying proceedings), the opportunity to move forward in a way that fosters a (constructive) on-going employment relationship is undermined.

#### 5.4. Question of Frivolous or Vexatious Applicants?

The anti-bullying jurisdiction, like the unfair dismissal and unlawful termination jurisdiction is one in which each of the parties is generally expected to bear its own costs in accordance with section 611(1) of the FW Act. The only exception to that rule is provided for at section 611(2) of the FW Act. The section provides that the FWC may order a person to bear some or all of another party’s costs in relation to an application if the FWC is satisfied that the person made or responded to the application vexatiously or without reasonable cause, or that it should have been reasonably apparent to the applicant or respondent that the application or response had no reasonable prospects of success.

Over the first 18 months of the fledgling jurisdiction, only one order for costs was made. That was for an amount of \$420.00 [16]. In that singular case, the FWC was minded to exercise its discretion in respect of costs for reasons that included the applicant’s unreasonable behavior in failing to attend the hearing of his application (without advising the FWC or responding to its inquiries about his attendance), for failing to provide any reasonable explanation for his conduct, and because he should have known his application had no reasonable prospects because he did not make it until six days after his employment ended ([16], para. 9). This order is significant not only because it is exceptional but also as it provides further evidence of the lack of applicant frivolousness and vexatiousness in this jurisdiction. The FWC denied the costs application even though the four respondents claimed costs on the grounds that Mr Hill’s application was “vindictive and frivolous” ([16], para. 4). The (self-represented) employer emailing the FWC to the effect:

From all evidence supplied to you by us it would be evident that we are not the guilty party but have been held to blackmail because we refused to reinstate Mr. Hill when he resigned & caused a significant disturbance within this business. We realize that the Bullying Legislation is very new & while we support its introduction & the management of the law by yourselves it would appear that there must be some “filtering” or mechanism whereby innocent parties can be protected from those who wish to abuse the system & use it to their improper advantage. Interestingly Mrs Hill states in her email of yesterday that her husband is a bankrupt therefore he had nothing to lose with this entire process but everything to gain including causing us additional work, expense & emotional pressure.

We look forward to hearing from you & bankrupt or not, should you wish to conclude this matter against Mr. Hill then we would appreciate for the record costs being awarded against him. ([16], para. 20)

Neither the quantum of the costs order nor the FWC's reasoning supported that position. The FWC dismissed the application for two reasons; because of the applicant's failure to prosecute his application ([16], para. 23) and under section 587(1)(c) because the applicant had no reasonable prospects of success because he was no longer employed by the respondent ([16], para. 24). The respondents sought total costs of \$1350.00 for wages for preparation, travel costs and attendance time. The applicant did not respond to the respondent's cost submissions despite being directed to do so by the FWC. The FWC ultimately exercised its discretion to award costs on the no reasonable prospects of success ground (not the frivolous and vexatious ground).

#### 5.5. Question of Bullying Conduct Prior to 1 January 2014

In one of the important early cases, the FWC Full Bench decision in *McInnes* (2014) FBWC 1440, it was determined that applicants could rely upon alleged bullying conduct that took place before the commencement of the anti-bullying provisions. This is important because it acknowledges that workplace bullying often occurs on a continuum over a prolonged period of time. By the same token, the FWC has also indicated that not all conduct occurring prior to 1 January 2014, will be relevant. In the case of *YH* the FWC categorized two broad groups of behavior; the events of 2010 and 2011, and the events of 2014 ([17], para. 58). The earlier events, on the available evidence, were characterized as "mutual failings" between Ms. YH and alleged bully, Ms. ET, and suggested that "Ms YH was, in all probability, difficult to supervise and prone to avoid unpleasant or undesirable tasks ([17], para. 62)."

#### 5.6. Question of a Constitutional or Trading Corporation?

*McInnes* [18] was also significant because the respondent, which receives State and Commonwealth funding to provide disability support services to the community, was held not to be a constitutional corporation. Commissioner Hampton found that the only way a community organization such as the respondent could be a "constitutional corporation" was if it was a "trading corporation". It was not such an entity because its services did not have the character of commercial trade in services or the elements of exchange; the community services were free of charge; its income from trading activities was inconsequential and the activities were insignificant, peripheral and incidental [19].

However, in *YH v Centre and Others* (2014) FWC 6128, Commissioner Hampton's approach may have been incorrectly applied in finding that another entity providing community services did fall within the definition. In that case the respondent initially advanced a jurisdictional objection on the grounds that it was not a constitutional corporation but withdrew that objection when the FWC drew its attention to *McInnes* and advised that it would take the same approach to deciding whether the Centre was a trading corporation. When the objection was subsequently withdrawn, the withdrawal was accepted as a concession that the Centre was a constitutionally-covered business ([17], para. 11; [20], para. 8). The apparent disparity raises questions about the anti-bullying provisions' coverage of incorporated associations providing community services and whether or not people are charged for those services.

#### 5.7. Question of What Behaviours will Be Considered as "Bullying" or "Unreasonable"?

Another significant early case under the FWC's anti-bullying jurisdiction was the case of *Ms. SB* (AB2014/1035), which was handed down in Adelaide on 12 May 2014. *Ms. SB* provided some clarification around the types of conduct that might amount to workplace bullying. This case involved a female applicant who had been subject to two earlier complaints of bullying by two co-workers. She claimed these workers were acting in concert and that they spread rumors and harassed and

badgered her on a daily basis ([9], paras. 18–19). The respondent denied any conspiracy between the two workers. One worker had since left the organization. The other had been absent for long periods having “been diagnosed with a range of physical and psychological symptoms consistent with high distress arising from the workplace” ([9], para. 71). Ms. SB also suffered from such symptoms and her worker’s compensation claim for the same was accepted ([9], para. 72). The respondent also claimed that the definition of “repeatedly behaves unreasonably” required that the conduct must have occurred more than twice ([9], para. 30).

The issues in dispute in *Ms. SB* were whether an individual or group of individuals had repeatedly behaved unreasonably towards the applicant and whether such behavior created a risk to her health and safety ([9], para. 36). The FWC was not satisfied that the applicant had been bullied at work, though it found that some conduct was bordering on “unreasonable”. Therefore, there was no basis for the FWC to consider making an order. It dismissed the application but made it clear that it did not consider the applicant had acted vexatiously or without foundation. In its view there were clearly cultural, communication and management issues that should be addressed by the respondent ([9], paras. 106–7, 109).

In *Ms. SB*, the FWC also made some important points about the type of conduct that might amount to workplace bullying. Making “vexatious allegations against a worker, spreading rude and/or inaccurate rumors about an individual, and conducting an investigation in a grossly unfair manner” may amount to bullying ([9], para. 105). Further, managers may be bullied by employees who report to them ([9], para. 105); there is no specific number of incidents required for the behavior to amount to “repeatedly” behaving unreasonably (provided there is more than one occurrence) ([9], para. 41); and the same specific behavior does not need to be repeated ([9], para. 41). Echoing *McInnes*, in *Ms SB*, the FWC held that behavior occurring prior to 1 January 2014, may be considered ([9], para. 42) and that “unreasonable behavior” is behavior that a reasonable person, having regard to the relevant circumstances considers to be unreasonable ([9], para. 43). Such “unreasonable behavior” must create a risk to work health and safety and there must be a causal link between the behavior and the risk ([9], para. 44; [18]). The “unreasonable behavior” does not need to be the only cause of the risk but it must be a substantial cause of the risk viewed in a common sense and practical way ([9], para. 44; [21]). In addition, making deliberately false or misleading allegations against another worker could be unreasonable ([9], para. 80).

In *Ms. SB* it was also held that a risk to health and safety means the possibility of danger to health and safety, the risk is not confined to actual danger ([9], para. 45; [22], paras. 65–67); and that the reasonable management action “exclusion” is more a “qualification” which reinforces that bullying conduct must of itself be “unreasonable” ([9], para. 47). Whether or not “management action is reasonable requires an objective assessment of the action in the context of the circumstances and knowledge of those involved at the time” ([9], para. 49). The objective assessment of the reasonableness of the management action might include: (a) the circumstance leading to, creating the need for, and at the time of the management action; (b) the consequences flowing from the management action; (c) the “attributes and circumstances” of the situation including the emotional and psychological health of the worker ([9], paras. 49–50; [23], para. 23); and (d) whether it could have been undertaken in a “more reasonable” or “more acceptable” manner ([9], para. 51). The FWC also held that whether the management action was undertaken in a “reasonable manner” is a question of fact requiring an objective test ([9], para. 52) and in determining “reasonable manner”, the facts and circumstances creating the need for the action, the impact of the action on the worker and the circumstances of the implementation and any other relevant matters may all be considered ([9], para. 53).

In the *Applicant v General Manager and Company C* [2014] FWC 3940 Commissioner Roe agreed that based on the requirements of Section 789FD and Commissioner Hampton’s consideration in *Ms SB*, in order to obtain orders, an applicant must establish a number of things. These included that she was subject to unreasonable behavior, that the behavior was repeated, that the unreasonable behavior occurred while she was at work, that the behavior was not reasonable management action carried out

in a reasonable manner, that the behavior created a risk to health and safety, and that if anti-bullying orders were not made, there is a risk that she will continue to be bullied at work ([24], para. 17).

In *Mac* [25], Vice President Hatcher attempted to draw up a list of the sorts of features one might expect to find in a course of repeated unreasonable behavior that would constitute workplace bullying. The list included “intimidation, coercion, threats, humiliation, shouting, sarcasm, victimization, terrorizing, 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” ([25], para. 99).

In *Mrs. Rachael Roberts* [26], which was determined on 23 September 2015, following an application by Mrs. Roberts on 25 February 2015, the FWC found that bullying had occurred and was at risk of continuing. In this case, the types of behavior that might be understood as bullying for the purpose of the anti-bullying jurisdiction were further expanded. Mrs. Roberts, a real estate agent, made 18 bullying allegations, primarily against Ms. Bird, the sales administrator and wife of the Principal and Co-Director, Mr. Bird. Many of these allegations were made out, including the claim that after one toxic interaction, Ms. Bird had “unfriended” Mrs. Roberts on Facebook. Further, Ms. Bird’s actions in not processing a silent listing sheet for nine days and not following usual (work) procedure in respect of Mrs. Roberts was unreasonable ([26], para. 35); being rude to her in response to an offer to answer the telephone was unreasonable ([26], para. 39); and placing Mrs Roberts’ client with a collection agency was unreasonable and was designed to damage the relationship between Mrs. Roberts and the client ([26], para. 59). In addition, engaging in behaviors such as not greeting the applicant in the morning, failing to distribute photocopying to her, ignoring her at work, sometimes speaking to her abruptly, generally treating her differently, having a belittling attitude towards her and making unreasonable comments like, “I don’t have to answer to you Rachael”, and, “Naughty little school girl running to the teacher”, were all regarded as bullying behaviors. Allegations of inappropriate comments of a sexual nature, including implying that Ms. Roberts had a sexual relationship with a lesbian client were also made out ([26], para. 69). The FWC found that Ms. Bird’s actions evinced a lack of emotional maturity and were indicative of unreasonable behavior, provocative and disobliging ([26], para. 89).

### 5.8. Order(s) and Recommendations

In the FWC’s published D&Os from 1 January 2014 to 30 June 2015 the Commission issued the one substantive order mentioned earlier (apart from confidentiality orders). This order was issued on 21 March 2014 (and amended on 15 September 2014), in the matter of *Applicant v Respondent* (AB2014/1052) [27]. The order as amended provided *inter alia* that the alleged bully perpetrator must complete any exercise at work before 8:00 a.m., must not have any contact with the applicant alone or make comment on her clothes or appearance, and must not raise work issues without notifying the Chief Operating Officer or his subordinate beforehand. The applicant was also ordered not to attend work before 8:15 a.m. When it was issued, it was foreshadowed that the order would remain in situ for about six months.

On 29 April 2015 the FWC made a recommendation in response to an application for an anti-bullying order by the applicant in AB2014/1531. After conducting conferences into relation to the application the FWC issued a recommendation which included *inter alia*, that the Canteen Committee of the respondent P&C Association be disbanded as soon as practicable, the applicant’s management functions be recognized by an additional hourly payment to be negotiated and settled by the President of the P&C, and any necessary dealings between the P&C and the applicant be conducted by the President.

## 6. Conclusions

The new jurisdiction has seen a number of interesting cases and has answered some of the concerns that various conservative politicians and (opposing) stakeholders had about it at the outset.

While there certainly has not been a tsunami of applications for anti-bullying orders to date, this needs to be considered in light of fact that this new right of recourse co-exists with a number of alternative, longer standing, and perhaps more trusted legal remedies to address workplace bullying. We expect that these other mechanisms to combat bullying are still being used as much as they were prior to the commencement of the new regime, in preference to anti-bullying applications. This possibility is beyond the scope of this paper but it is one that needs to be explored in the future. The unexpectedly low number of anti-bullying applications may also be a consequence of a number of variables, which impact on the FWC's new anti-bullying jurisdiction. These include but are not limited to the exclusion of some workers from making anti-bullying applications. For example, (some) State government employees, people employed in businesses that are not "constitutionally covered", members of the Defense force and people no longer employed in the workplace in which bullying took place are ineligible to apply. Having to remain in a workplace with people a target perceives to be bullies, may persuade a target to go down a different legal pathway (as indeed may the lack of any financial remedy. In addition, people whose bullying matters are caught by s789FE which relates to Australia's defense or national security, or to existing or future covert domestic or international operations may have their anti-bullying applications dismissed by the FWC). We suspect also that the "reasonable management action" approach to defining bullying and the requirement that the offending conduct occur "while a worker is [at] work" may discourage or exclude some targets from applying.

Applicants on the whole have been found to be genuine (though perhaps wrong) in their belief that they have been bullied at work. There is little evidence (including the paucity of costs orders) to support the early fear expressed by opponents of the new regime that individuals would make applications for anti-bullying orders vexatiously or frivolously. Sometimes, the applicant was held to not be "at work" (and therefore not a worker) when the alleged bullying occurred denying the FWC the power to deal with the application [28]. Other applicants were found to be outside the geographical reach of the jurisdiction [29]. Some employees were no longer employed with the respondent employer and therefore (arguably) not at any further risk of bullying (and also therefore outside the jurisdiction of the FWC) [30].

The FWC's statistics indicate (perhaps not unexpectedly) that most applications are finalized by withdrawal at some stage prior to determination. The approximate ratio of application finalization by type is 60:30:10 (withdrawal, resolution, determination). Of the approximately 10% of applications ultimately determined by the FWC in the period 1 January 2014 to 30 June 2015, most were dismissed for procedural defects which remained uncorrected even after the FWC went to considerable lengths to encourage the applicants to properly finalize them. Other matters were not within the FWC's jurisdiction for reasons that included that there was no risk of the bullying continuing because the applicant's employment had ended. Of the matters finally determined by the FWC during the relevant period, only two pointed both to the occurrence of workplace bullying and harassment and the risk of that behavior continuing. During the relevant period, only one of those applications resulted in an order by the FWC (and a conference was listed for the parties to discuss an order in the other).

As alluded to above, it is not within the scope of this paper to explore why so few applications have been made to the FWC particularly in the face of such a high number of inquiries. It is likely that a new jurisdiction such as this will take time to become known, understood, substantial and fully utilized. We would also theorize that no matter how user-friendly or well-managed a complaint mechanism or legal remedy is, there are numerous reasons why targets may do no more than make an initial enquiry. As with whistle-blowing (which is also a way of voicing concerns about workplace conduct which is perceived to be unacceptable), feelings of fear [31], shame, disempowerment, retribution and an inability to act [31] may contribute to the high number of targets who never complain about bullying or who withdraw their application. These silencing factors might also help us to understand the high dismissal rate caused by applicants who fail to follow through by complying with apparently trivial procedural details. It is possible that there are strong forces at play, which out-weigh the support and encouragement the FWC appears to afford applicants (at least at the initial stage) in respect of

their anti-bullying application. These “forces” include things like fear of punishment and/or social isolation [31], self-censorship [32], concerns about risk and personal consequences [33], wanting to avoid being labelled, e.g., as a “complainer” or “troublemaker” by their peers [34], self-esteem [35], inequitable power relationships [35], and pro-social and altruistic motivations such as wanting to avoid hurting others [36].

The efficacy of the fledgling anti-bullying jurisdiction must be measured holistically and its success or otherwise be considered within the context/landscape of silencing. Within that context, it seems to be inching its way towards being a useful adjunct to the range of other remedies available to address workplace bullying. Indeed, at least four applicants in the reviewed period made applications for unfair dismissal or general protections at or around the same time as they made their anti-bullying applications [36].

As may have been foreshadowed by its track record in respect to other types of applications which may be used to tackle workplace bullying (e.g., unfair dismissals, general protections, and unlawful termination applications), the FWC has resolved many anti-bullying applications matters without proceeding to hearing and determination. It is likely that more matters might be similarly resolved if the parties engaged with the FWC process act constructively rather than seeking to obstruct it by employing various stalling and other strategies such as making jurisdictional and other objections to the process. If the parties did engage positively (in keeping with the way the regime clearly intends they do) the ultimate possibility that the FWC might (need to) make an anti-bullying order could be short-circuited early in proceedings. This would increase the likelihood of improved and ongoing working relationships. The employee’s “reasonable belief” that he or she has been bullied (whether or not the employer shares this view and whether or not this view is true or well-founded) could be acknowledged by the respondent employer and addressed. Mediations if held, and preliminary conferences, could be better utilized by the parties to try and resolve the issue and seek an agreed way forward without the FWC needing to proceed to hearing, determination and possibly an order (and the accompanying publicity). That said, it needs to be acknowledged that not all mediations are equal and the outcomes (including any accompanying sense of justice or fairness) may be influenced positively or negatively by the skills and experience of the assigned mediator as well as by the conduct of the parties at mediation. It also needs to be acknowledged that whatever FWC avenue a bullied worker might choose to address the bully problem, there is a real possibility that they will feel that they have also been “bullied” into a resolution by the process. This possibility is also one that is beyond the scope of this paper but it is one which ultimately needs to be considered in determining the success or otherwise of the new regime.

Our preliminary conclusion is that the fearmongers were not justified in their negative view of the anti-bullying regime. To date the anti-bullying jurisdiction has proven to be more velvet glove than paper tiger. It appears the FWC is taking a steady, incremental, and even-handed approach to the development and oversight of its new role in the anti-bullying jurisdiction. While the jurisdiction may not (as yet) have elicited the flood of applications that were anticipated, it seems that the FWC has efficiently (and perhaps effectively) handled the matters that did come its way. This is perhaps best highlighted by the comments of the applicant in *Applicant v Respondent* (AB2014/1052). When she applied to the FWC to revoke its earlier order just before Christmas in 2014 she wrote:

Since our last meeting there has been a negligible amount of conflict between A and myself, and I have felt comfortable approaching my supervisor, B, with any concerns that I have. The past year of intervention from Fair Work has been very positive and helpful and I am very grateful for the support that has been given to me by Senior Deputy President Drake.

I think that the New Year is an appropriate time to lift the orders and that it is in the best interest of everyone involved to do so. ([37])

The jurisdiction is designed to resolve matters expeditiously so as to preserve the relationships between the parties without having to proceed to the “last resort”: issuing an anti-bullying order.

While the issuing of a single order in 18 months might be seen by some as evidence of a deficiency, it could also be characterized as a marker of success—arguably the regime is doing exactly what it was designed to do, managing applications to keep the targets of bullying employed and at work, and resolving the bullying without the FWC needing to use its iron fist to crack down and issue orders. In these early days of its existence, it might be said that Australia’s national anti-bullying regime is more iron fist than paper tiger in that it appears to deal quickly and efficiently with those matters which it does not dismiss for reasons of procedural deficiencies. However, the high rates of enquiry and low rates of application suggest that targets may be being silenced by factors outside the reach of the new jurisdiction. The fact that there have been so few claims might mean that the new remedy is not appealing. This could be because it does not (at least officially) allow for financial compensation to the bully target. It might also mean that the mere existence of the new legislation has acted as a deterrent in the sense of encouraging employers to address workplace bullying so that targets do not need to make application to the FWC. The paradox is that if the FWC had been busier dealing with anti-bullying applications, the legislation may only have had a negligible or no deterrent effect on workplace bullying. The discontinuance of claims by employees could also be suggestive of litigation fatigue, and the limitations of alternative remedies such as alternative dispute resolution in pitting disempowered and vulnerable targets against a formally (or informally) powerful bullying employer/manager/employee.

In light of both the complexity of the workplace bullying problem and the enormous economic, psychological and social burden caused by bullying in Australian workplaces, we expect that the national anti-bullying legislation will only ever be one legal prong among a range of necessary alternate legal and social remedies.

**Supplementary Materials:** The following are available online at [www.mdpi.com/2075-471X/5/1/4/s1](http://www.mdpi.com/2075-471X/5/1/4/s1), Table S1: Fair Work Commission 1 January—30 June 2014 Anti-Bullying Applications UNDER Section 789FC.

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29. See for example, *Mirceau Stancu* [2015] FWC 1999. Mr. Stancu was a voluntary sanitation engineer engaged by Australian Volunteers International to work for the Ministry of Public Works and Utilities in Kiribati. The applicant was found to not work for a "constitutional corporation" (para. 34) and while working as a volunteer overseas was beyond the reach of the FW Act in its entirety (para. 44).

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