



RECRUITMENT AND CONSULTING
SERVICES ASSOCIATION
AUSTRALIA & NEW ZEALAND



RCSA
BUSINESS
SOLUTIONS

Memo

Australia

Bullying benchbook

RCSA Memos are prepared by RCSA Business Solutions service providers to assist RCSA Members to understand factual matters which impact upon operations. Further memos are available to RCSA Members at <http://www.rcsa.com.au>

This memo was drafted by FCB Group on 22 November 2013.

Category: Workplace Relations Sub-category: Employment

Bullying and Harassment FWC

With the Fair Work Commission's (**FWC**) new bullying jurisdiction about to commence, is your business ready for the "bullying tsunami"?

The new complaints forum will allow workers who believe they are being bullied at work to apply to the FWC for an order to stop the bullying. Commencing 1 January 2014, the FWC has predicted that around 3,500 bullying complaints will be received in the first year.

On the 20th November 2013 the Fair Work Commission (**Commission**) released a draft Benchbook, and corresponding case management, outline (**Benchbook**) which indicates the proposed procedures under which bullying complaints will be handled. Upon initial review of the Benchbook there is little detail within the proposed process which will limit the expected volume of claims.

The main details of the proposed process by which the Commission intends to handle bullying claims, as outlined within the Benchbook, includes:

	Process for Commission	Key Points for Employers
Applications	<ul style="list-style-type: none"> No timeframe for lodging a complaint 	<ul style="list-style-type: none"> Retrospective complaints can be lodged
Processing Applications	<ul style="list-style-type: none"> 14 days to start dealing with application Application served on employer, opportunity to provide a written response Application served on alleged bully, opportunity to provide a written response Report compiled by commission Decision made on how to process matter Applications may be dismissed if deemed frivolous, vexatious or have no reasonable prospects of success 	<ul style="list-style-type: none"> The employer will be notified of the application before the alleged bully Employer should commence internal investigation without delay Commission will not make decisions throughout the application process



RECRUITMENT AND CONSULTING
SERVICES ASSOCIATION
AUSTRALIA & NEW ZEALAND



RCSA
BUSINESS
SOLUTIONS

Memo

Mediation	<ul style="list-style-type: none"> • The Commission may recommended mediation where deemed appropriate given nature of allegation • Mediation is a confidential and voluntary process • No decision imposed, however guidance will be given to assist the parties reaching their own conclusion 	<ul style="list-style-type: none"> • Participation of all parties recommended • Monetary settlements will not be promoted by commission
Findings/ Hearings	<ul style="list-style-type: none"> • Where no resolution achieved through mediation or mediation deemed not suitable the matter will be escalated through the Commission • A preliminary conference will be conducted with all parties • Interim orders may be made • Commission member will deem when and how matter is heard 	<ul style="list-style-type: none"> • Parties can be required to attend • Commission can make orders for bullying to stop against all individuals involved • cost of disputing a claim at a hearing will be met by each party directly • Extremely unlikely that commission will order one party to pay the other parties' legal costs.

How we can help you?

With the commencement of the new jurisdiction imminent it is vital that members are prepared for the changes, including reviewing policies and procedures, up-skilling managers and educating employees generally about their rights and obligations.

Whilst the draft Benchbook provides a general guideline of what to expect, it is still important to note that uncertainty remains around the introduction of this new jurisdiction. It is important that Members seek timely and professional advice if faced with any workplace Bullying or Harassment allegations.

FCB Group specialises in workforce management and health and safety within the recruitment and on-hire industry. For further information go to www.fcbgroup.com.au



Disclaimer

This memo has been drafted by FCB Group to assist RCSA Members with a general understanding of the subject matter. This memo does not purport to be an exhaustive statement of all best practice requirements in the area. It is provided to RCSA Members as a guide only. Members are encouraged to obtain further advice from an appropriate professional source.

[RCSA Workforce Info Line](#) is a new arm of RCSA Business Solutions and an additional benefit for Corporate Members. WIL is an immediate telephone advice service in the three key areas of workplace relations, work

AUS 1300 727 504

bussolutions@rcsa.com.au

NZ 0800 441 904



RECRUITMENT AND CONSULTING
SERVICES ASSOCIATION
AUSTRALIA & NEW ZEALAND



RCSA
BUSINESS
SOLUTIONS

Memo

*health and safety, and independent contracting. Corporate Members can phone WIL in Australia on **1300 988 685** and **0800 7272 69** in New Zealand.*

Members wishing to seek further information about all other operational matters can email bussolutions@rcsa.com.au