

Article Information

Authors: Emily HaarDemi Harford

Service: Bullying and Harassment, Discrimination, Employment & Labour, Employment Disputes & Litigation, Workplace Investigations

Preventing workplace bullying in a remote working environment

The Fair Work Commission (FWC) has recently, in *Harrison v The Trustee for UBT Marketing Trust*, considered the potential for workplace bullying to occur in remote working environments.[1] While the FWC ultimately held that “curt or abrupt” messages, via messaging applications in this case, did not amount to bullying, it was notable that the FWC queried whether the manager might have required more support to most effectively supervise his remote team.

In 2023, an IT agent applied for an order to stop bullying at work under s 789FC of the *Fair Work Act 2009* (Cth), alleging that he was bullied by his IT Support Team Manager. Section 789FD defines ‘bullying at work’ as being when an individual or group of individuals repeatedly behave unreasonably towards another worker and that behaviour creates a risk to health and safety.[2] However, reasonable management action carried out in a reasonable manner does not constitute to bullying in a workplace environment.[3]

With an entirely remote role, the IT agent argued that he was micromanaged, frequently monitored and constantly questioned about his work performance, despite receiving “exceptional” ratings in his annual performance review. He also claimed that he was excluded from Microsoft Team events, was not awarded with appropriate wage increases, and was spoken to in an aggressive manner during a phone meeting when discussing his concerns.

The IT Support Team Manager argued that his frequent questioning of the IT agent first started when the IT agent’s work performance and response times were found to be the lowest in the team. He also expressed that the IT agent avoided engaging with him about his day-to-day workload, meaning he needed to follow up.

Commissioner’s Considerations:

The Commission found that although the manager’s communication with the IT agent was frequent and interrogative, it did not rise to a level of unreasonable behaviour that meant the conduct was workplace bullying. Because both parties did not work in the same location, they needed to communicate with each other remotely through Microsoft Teams, Skype, and SMS. Much of the IT Manager’s interrogation was found to be through SMS and while some of the messages could have been “...misinterpreted as curt or abrupt...”, the messages were not found to be *unreasonable*. The Commissioner also noted that “...Much of the issues around [the IT Manager’s] questioning of [the IT agent] including in relation to working from home may have arisen from the manner of communication - that is, via text only - as tone and nuance are often lost in text.”

Additionally, the IT agent claimed that his IT Manager spoke in an extremely aggressive, overbearing and belittling manner via telephone meeting. However, the Commission concluded that “...while it was a lengthy and difficult meeting conducted by telephone, it was not unreasonable behaviour that amounted to bullying...”.

Although the Commission found that the IT Manager “may have needed to consider how enquiring by message only (that is, without any verbal or face-to-face communication) could have led to misunderstandings”, it confirmed that “...management actions do not need to be perfect or ideal in order to be reasonable...”. The Commissioner found that the IT agent had not been bullied at work and that they did not have the power to make a “stop bullying order”.

Lessons for Employers

As remote working is becoming increasingly common in the Australian workforce, it is important for all workers, but managers in particular, to consider how their communication style may be interpreted, and to ensure they act in a reasonable manner. Employers should have processes in place to ensure that performance and productivity is adhered to by remote workers.

This may be achieved through measures such as:

- Implementing Anchor Days, when remote employees come into the office on mandated days to work together face-to-face with their teams.
- Active engagement with employees, avoiding the sole use of SMS as means of communication. Remote bullying issues are complex and tone and nuance is often lost via SMS.
- Training and upskilling managers to ensure they can get the best out of their teams, noting that management actions do not need to be perfect or ideal to be reasonable.

[1] *Benjamin Peter Harrison v The Trustee for UBT Marketing Trust, Mathew Burzin and Peter Ireland* [2024] FWC 1422.

[2] *Fair Work Act 2009* (Cth) s 789FD(1)(a)-(b).

[3] *Ibid* (2).