

Employment and Industrial Relations Client Alert

19 March 2010

Alternatives to WorkSafe Prosecutions

An enforceable undertaking recently negotiated between WorkSafe Victoria and a large municipal employer provides important guidance in relation to the measures which can be applied to meet an employer's duty of care in relation to workplace bullying, as well as a useful indication of the approach that employers may take to avoid a prosecution proceeding through to trial.

Enforceable undertakings can be used as an alternative to prosecutions by WorkSafe to deal with workplace bullying. They usually involve the employer promising, in a legally binding agreement, to carry out specific activities to improve the health and safety of employees and to deliver benefits to industry and the broader community.

In this case, WorkSafe and the employer agreed to a range of matters for inclusion in the undertaking. Notably, the employer committed to:

- employ an independent consultant to train all workers in the prevention, identification and management of workplace bullying;
- conduct refresher training at least every two years and provide all new staff with anti-bullying training;
- ensure that all staff with management responsibilities have accountability for occupational health and safety and the return to work of injured people;
- increase the profile of its health and safety representatives and equal opportunity and harassment officers within the organisation;
- review bullying and harassment policies annually;
- conduct a workshop on bullying involving senior managers and human resources managers from other related organisations in the region;
- publish details of its occupational health and safety performance across a range of benchmarks in its annual report.

While several of the elements of the undertaking go beyond WorkSafe's own guidance note on workplace bullying, this case represents a good example of WorkSafe's expectations of larger organisations.

For further information on occupational health and safety issues, including enforceable undertakings, please contact the Employment and Industrial Relations Team on (03) 9609 1555.

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The information contained in this alert is intended as general commentary and should not be regarded as legal advice. Should you require specific advice on this topic, please contact the author directly.