

BULLYING ORDERS AGAINST COMMITTEE

Earlier this year, the Fair Work Commission found that a director and employee of a caretaking company were bullied at work and ordered each member of a body corporate committee, including any new members of that committee in the future, to undergo anti-bullying training.

The Facts

The scheme was a multi-residential private gated estate with around 93 homes.

The caretaking company had a management agreement with the body corporate to perform various duties.

The director and employee of the caretaking company applied to the Fair Work Commission for orders to stop the alleged bullying of the Treasurer and committee generally.

It was alleged that:

1. the Treasurer and committee generally were behaving unreasonably through a series of emails exchanged, and the non-payment of the caretaking fee and expenses, over several months;
2. the substance of the emails included changes to long-held arrangements (shortly prior to Christmas), such as refusing to reimburse receipts for fuel used for the mower, vehicle and other equipment, mower blades, and a requirement to provide logbooks;
3. photos of the employee were taken while carrying out duties and going about personal business as a resident, as well as recording notes detailing the employee's whereabouts;
4. a notice was issued to residents and owners stating to the effect that the director and employee were making false and unsubstantiated allegations;
5. the above conduct created an immediate and ongoing risk to the health and safety of the director and employee, and financial strain.

The Fair Work Commission considered submissions and evidence from the parties about those allegations, including cross-examination.

The Outcome

The Fair Work Commission had jurisdiction to make orders in this application. The question about jurisdiction is outside the scope of this article, save to say that the primary concepts are whether there is a 'constitutionally-covered business' and a 'person conducting a business or undertaking'.

The Fair Work Commission found:

"...whilst the majority of the issues raised reasonable matters to be raised by the Committee, the manner in which they have been raised, including the frequency, tone, timing, content and approach detailed in the correspondence is not at all times reasonable and there are multiple incidents of substantiated unreasonable behaviour"

“...repeated unreasonable conduct has occurred and that there is an ongoing risk to the health and safety of the director and employee...”

The Fair Work Commission therefore determined that the director and employee had been bullied at work and that it was appropriate to issue interim orders to ensure a safe place of work.

What does this mean?

Committee members, including owners and occupiers at a scheme, may have exposure to laws outside of the body corporate Act and regulation modules.

While the code of conduct applying to committee members does not include provisions relating to bullying or harassment, that does not prevent an eligible person from pursuing remedies through the Fair Work Commission.

A body corporate should consider:

1. protecting itself from exposure by taking reasonable management action by preparing and implementing a bullying policy;
2. reviewing its office bearer liability policy of insurance in relation to these types of claims.

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