



## **Fair Work Commission Amendment (Anti-Bullying and Other Measures) Rules 2013**

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I, Iain Ross AO, President of the Fair Work Commission, acting after consultation with the Members of the Fair Work Commission, make the following Rules under the *Fair Work Act 2009*.

Dated 16 December 2013

Iain Ross AO  
President of the Fair Work Commission

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## **1 Name of Rules**

These Rules are the *Fair Work Commission Amendment (Anti-Bullying and Other Measures) Rules 2013*.

## **2 Commencement**

These Rules commence on 1 January 2014.

## **3 Authority**

These Rules are made under the *Fair Work Act 2009*.

## **4 Schedule(s)**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Fair Work Commission Rules 2013*

#### **1 Rule 6 (heading)**

Repeal the heading, substitute:

#### **6 Dispensing with rules and orders inconsistent with rules**

#### **2 Rule 6**

Before “The Commission”, insert “(1)”.

#### **3 At the end of rule 6**

Add:

- (2) The Commission may make an order that is inconsistent with these Rules and if it does so, the order will prevail.

Note: An order of the Commission may be given in the form of a direction.

#### **4 Subrule 10(2) (note 3)**

Omit “3.03(8) and 3.07(8)”, substitute “3.03(8), 3.07(8) and 6.07A(8)”.

#### **5 Rule 12 (heading)**

Repeal the heading, substitute:

#### **12 Representation by a lawyer or paid agent**

#### **6 After paragraph 12(1)(c)**

Insert:

- ; (d) participating in a conciliation or mediation process conducted by a member of the staff of the Commission, whether or not under delegation, in relation to an application for an order to stop bullying made under section 789FC of the Act.

#### **7 Subrule 12(1) (note)**

Omit “Note”, substitute “Note 1”.

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**8 At the end of subrule 12(1)**

Add:

- Note 2: Subrule 12(3) deals with representation of parties in a conference or hearing before a Commission Member.

**9 Subrule 12(3)**

Omit “the Commission”, substitute “a Commission Member”.

**10 After rule 23**

Insert:

**23A Response to an application for an order to stop bullying**

- (1) The person named as an employer or principal in an application made under section 789FC of the Act must lodge with the Commission a response to the application within 7 calendar days after the day on which the person was served with the application.

Note 1: The response must be in the approved form—see subrule 8(2).

Note 2: A person can be named in an application as an employer or principal of both the applicant and the person alleged to have engaged in bullying behaviour. This subrule requires the employer or principal to lodge a response in either case.

- (2) If:

- (a) 2 or more applications made under section 789FC of the Act:
- (i) are lodged at the same time; and
  - (ii) concern the same or substantially similar conduct; and
  - (iii) name the same employer or principal; and
- (b) the substance of the response of the employer or principal is the same for each of the applications;

the employer or principal may lodge one response in respect of the applications.

- (3) If a person named in an application under section 789FC of the Act as allegedly engaging in bullying behaviour wants to lodge a response to the application, the person must lodge the response with the Commission within 7 calendar days after the day on which the person was served with the application.

Note 1: The response must be in the approved form—see subrule 8(2).

Note 2: A person named as allegedly engaging in bullying behaviour is not required to lodge this response. If the person chooses to lodge this response, the person must also serve a copy of the response in accordance with the requirements of Schedule 1.

### **11 Rule 45 (after the heading)**

Insert:

*Unfair dismissal, general protections and unlawful termination  
FWC applications*

### **12 Rule 45**

Before “If the”, insert “(1)”.

### **13 At the end of rule 45**

Add:

*Application for an order to stop bullying*

- (2) If the Commission is required to serve an application made under section 789FC of the Act on a person, the Commission must serve upon the person a copy of the application excluding that part of the application that deals with the application fee.

### **14 Clause 1 of Schedule 1 (note)**

Omit “Note”, substitute “Note 1”.

### **15 Clause 1 of Schedule 1 (after the note)**

Insert:

Note 2: Under subrules 6(1) and (2) the instructions as to service that are set out in this Schedule may be dispensed with or varied by an order or direction of the Commission in a matter. This is most likely to occur in relation to an application made to the Commission under subsection 789FC(1) of the Act for an order to stop bullying.

### **16 Clause 1 of Schedule 1 (cell at table item dealing with F6, column headed “Provision”)**

Repeal the cell, substitute:

Sections 375B,  
376, 400A, 401,  
611, 779A and



780 of the Act

**17 Clause 1 of Schedule 1 (at the end of the table)**

Add:

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**Schedule 1 Amendments**

F72	Anti-bullying	Application for an Order to Stop Bullying	Subsection 789FC(1) of the Act and subrule 45(2)	Commission	The person named in the application as an employer or principal of the applicant	As soon as practicable after lodgement with the Commission
F72	Anti-bullying	Application for an Order to Stop Bullying	Subsection 789FC(1) of the Act and subrule 45(2)	Commission	Each person named in the application as allegedly engaging in bullying behaviour; and each person named in the application as an employer or principal of a person who is allegedly engaging in bullying	On the next business day after service of the application upon the person named as the employer or principal of the applicant

Amendments **Schedule 1**

					behaviour	
F73	Anti-bullying	Response from an Employer/ Principal to an Application for an Order to Stop Bullying	Subrules 23A(1) and (2)	Person named in the application as an employer or principal	The applicant, each person named in the application as allegedly engaging in bullying behaviour, and each person named in the application as an employer or principal, other than the person making the response	Within 7 days after being served with the Application for an Order to Stop Bullying
F74	Anti-bullying	Response from a person against whom bullying has been alleged to an	Subrule 23A(3)	Person named in the application as allegedly engaging in	The applicant, each person named in the application as allegedly	Within 7 calendar days after being served with the Application for an Order to Stop Bullying

**Schedule 1** Amendments

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Application for  
an Order to Stop  
Bullying

bullying  
behaviour

engaging in  
bullying  
behaviour,  
and each  
person named  
in the  
application as  
an employer  
or principal,  
other than the  
person  
making the  
response