



# DECISION

*Fair Work Act 2009*

s.789FC - Application for an order to stop bullying

**Joseph Osure**

(AB2024/747)

DEPUTY PRESIDENT MILLHOUSE

MELBOURNE, 14 MAY 2025

*Application for an order to stop bullying – threshold matter – whether there is a risk that the worker will continue to be bullied at work by the individual or group – no risk – application dismissed.*

[1] Mr Joseph Osure has been employed with the National Disability Insurance Agency (NDIA) since January 2020. On 2 October 2024, Mr Osure made an application to the Commission for an order to stop bullying under s 789FC of the *Fair Work Act 2009* (Cth) (Act). The application named NDIA as a respondent, in addition to two co-workers that Mr Osure contends bullied him at work (collectively, the Persons Named).

[2] Mr Osure’s application alleges that he has been subjected to bullying by the Persons Named and other unreasonable behaviour by NDIA since approximately August 2024. NDIA and the Persons Named deny the allegations.

[3] This decision addresses a threshold matter concerning whether the Commission can be satisfied that there is a risk Mr Osure will continue to be bullied at work by the Persons Named within the meaning of s 789FF(1)(b)(ii) of the Act. The decision does not deal with the question of whether Mr Osure has been bullied at work under s 789FF(b)(i).

## **Statutory context**

[4] Part 6-4B of the Act is titled *Workers bullied at work*. It is not in dispute that NDIA is a *constitutionally covered business*,<sup>1</sup> nor that Mr Osure is a *worker*<sup>2</sup> to whom the provisions of Part 6-4B are capable of applying.

[5] A person who reasonably believes that they have been bullied at work may apply to the Commission under s 789FC for an order under s 789FF of the Act. Section 789FF provides as follows:

### **789FF FWC may make orders to stop bullying**

(1) If:

- (a) a worker has made an application under section 789FC; and
- (b) the FWC is satisfied that:

- (i) the worker has been bullied at work by an individual or a group of individuals; and
- (ii) there is a risk that the worker will continue to be bullied at work by the individual or group;

then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work by the individual or group.

[6] Both limbs of s 789FF(1) must be met for the Commission to consider the exercise of the discretion to make an order to stop bullying. If the second limb of s 789FF(1)(b) is not and will not be met (pertaining to future risk) then an application for an order to stop bullying cannot succeed.<sup>3</sup> The Act does not define the term “risk” and accordingly, it is to be given its ordinary meaning having regard to the context in which it appears and statutory purpose. The Macquarie Dictionary defines “risk” to mean “exposure to the chance of injury or loss; a hazard or dangerous chance.” The Commission must be satisfied that there is a real (and not simply conceptual or hypothetical) risk.<sup>4</sup>

[7] This decision deals with the question of whether s 789FF(1)(b)(ii) is, or will be, met.

### **Relevant background**

[8] Mr Osure is employed by NDIA as an Australian Public Service (APS) 6 full-time employee. He holds the role of Senior Fraud Officer.<sup>5</sup> On 7 August 2024, Mr Osure was assigned to the Risk Advisory Team to contribute to the delivery of the Fraud Remediation Plan. In this role:

- Mr Osure reported directly to the first Person Named, at the time an Executive 1 employee who I have chosen to refer to as Mr H in this decision.
- In turn, Mr H reported to the second Person Named, Ms H. At the time of the application, Ms H held an Executive Level 2 role, as the overarching Director of Risk and Projects Advisory supervisor.
- Ms H reported to Mr Stuart Fisher, the Branch Manager, Risk Management.

[9] Mr Osure’s application contends that from August 2024, he has been bullied at work including by reason of the Persons Named and the NDIA engaging in the following conduct:<sup>6</sup>

- (a) inaccurately accusing Mr Osure of undertaking work outside of his remit or undertaking work that falls outside the team’s core function;
- (b) suppressing Mr Osure’s ideas;
- (c) unfairly comparing Mr Osure’s work hours and attendance to other team members;
- (d) reaching incorrect or misleading conclusions regarding the timely delivery of work;
- (e) excessively scrutinising Mr Osure or imposing onerous or discriminatory work requirements;
- (f) making discriminatory, pestering and threatening requests to set a work pattern;
- (g) making factually incorrect accusations;
- (h) not taking accountability for management’s confusion about Mr Osure’s work responsibilities;

- (i) nit-picking and providing unconstructive, unnecessary and unjustified criticism to Mr Osure;
- (j) making unfair and intimidating accusations;
- (k) changing requirements leading to redundancies while incorrectly diagnosing inefficiencies;
- (l) making an unprofessional request to disclose sensitive information;
- (m) imposing onerous and unrealistic work arrangements;
- (n) failing to support Mr Osure during the internal complaint process;
- (o) conducting an unsatisfactory internal complaint resolution process;
- (p) unprofessional grumbling and intimidation in response to Mr Osure exercising his rights;
- (q) false accusation imposed of not responding to Mr H during the formal complaint process;
- (r) factually incorrect accusation of not engaging with Ms H during the formal complaint process;
- (s) unreasonable and inaccurate assertions made during the formal complaint process;
- (t) reaching conclusions not supported by the evidence;
- (u) issues raised and requested outcomes not addressed in the proposed resolution; and
- (v) making intimidating threats of victimisation from the complaint process.

**[10]** NDIA’s position is that it had, including through Mr H and Ms H, raised concerns with Mr Osure regarding working outside of the NDIA’s ordinary span of hours as set by the *National Disability Insurance Agency –Enterprise Agreement 2024 – 2027*. It is also said that the Persons Named provided Mr Osure with feedback regarding his work performance, clarified the remit of his position and reinforced the performance and professional standards expected of him in his role. NDIA contends that this was reasonable management action undertaken in a reasonable manner.

**[11]** Mr Fisher is the Branch Manager, Risk Management at NDIA. He said that he professionally respects Mr Osure’s expertise, particularly in the area of fraud. Mr Fisher gave uncontested evidence about the restructure of the Risk Management Branch undertaken by NDIA in November 2024.

#### *Risk Management Branch restructure*

**[12]** NDIA is structured into several divisions, one of which is the Risk, Audit and Resilience Division which oversees the Risk Management Branch. The Risk Management Branch has approximately 32 employees, comprising of APS employees and Executive Level employees under Mr Fisher’s management. Mr Fisher reports to the Chief Risk Officer.

**[13]** In November 2024, following the time of Mr Osure’s complaints, the Risk Management Branch was restructured. This involved transitioning the Branch to what Mr Fisher described as an “embedded operating model.”<sup>7</sup> The NDIA submits that the impetus for this change was to:

- (a) better align risk management teams with specific areas of the NDIA, thereby enabling team members to develop a deeper understanding of their designated business areas; and

- (b) create a full-service proposition for risk management, where the assigned risk team would address all risks within their area and activate the broader capability of the branch if additional expertise was needed.

[14] The final structure was communicated to the Risk Management Branch on 18 November 2024. Under the new structure, APS6 employees such as Mr Osure report directly to Executive Level 1 employees. Executive Level 1 employees report to Executive Level 2 employees. Relevantly, as part of the restructure:<sup>8</sup>

- (a) Mr H transitioned into an acting Executive Level 2 Group Risk Partner position within the Service Design & Improvement Group; and the Partners, Providers and Home & Living Group.
- (b) Ms H remained in an Executive Level 2 Group Risk Partner position, serving as the Director of the Integrity, Transformation & Fraud Fusion Taskforce, Children's Taskforce and Government, Risk and Legal.
- (c) Mr Osure retained his APS6 position but has been realigned under the Enabling Services Chief Operating Officer Team, which is led by Mr Brad Murahari as an Executive Level 2 Group Risk Partner. A temporary arrangement involved Mr Osure reporting directly to Mr Murahari pending implementation of the new structure. However, under the revised structure, Mr Osure will report to an Executive Level 1 who in turn will report to Mr Murahari in accordance with usual practice in the team.

## Contentions

[15] Mr Osure did not give oral evidence at the hearing in support of his application. In Mr Osure's written submissions, with respect to the consideration in s 789FF(1)(b)(ii) of the Act, Mr Osure submits that the following factors contribute to a continued risk of future bullying:<sup>9</sup>

- (1) **None of the issues in the complaint have been investigated or addressed to date:** Mr Osure contends that the false allegations made by the Persons Named have not been withdrawn, leaving a permanent mark on an otherwise spotless employment record and a deep emotional wound due to unresolved injustice. Mr Osure contends that an essential step needed to address the risk of future bullying is to recognise that bullying had occurred and in this respect, relies upon the decision in *Application by Lacey, Darren*.<sup>10</sup>
- (2) **Ongoing need for interaction with Persons Named:** Mr Osure contends that despite the restructure of the Risk Management Branch, he remains in the Branch with Mr H and Ms H and this is demonstrated by the revised organisational chart.<sup>11</sup> Mr Osure's position is that there is an ongoing requirement for interaction at the same monthly Branch meetings, and there was an invitation to the same department Christmas lunch in 2024. Further, Mr Osure has retained tasks related to the Fraud Remediation Plan and will need to engage with Ms H creating an ongoing risk to Mr Osure. There is also a risk of ongoing interaction with Ms H should she act in the role of Acting Branch Manager. With respect to Mr H, he is currently performing in an Acting position and once this temporary role ends in April 2025, he may be transferred back to Mr Osure's current team.

- (3) **Ongoing issues:** Mr Osure contends that despite the change in reporting, Mr H has provided Mr Osure's new manager Mr Murahari with incorrect information about Mr Osure's work, including that certain work output was too lengthy. This is said to be inaccurate, has not been withdrawn and is emotionally draining for Mr Osure. Further, an email from Mr Fisher which was referenced in Mr Osure's application for a stop bullying order was forwarded to Mr Murahari. This email stated, amongst other things, that should an amicable working relationship not be achievable "...performance management processes will be considered."<sup>12</sup> This statement is said to be unreasonable and unfair and has been provided to Mr Murahari.
- (4) **Impermanence of new structure:** Mr Osure submits that while it may seem that the reporting structure has changed, the change may be transient in nature. This is said to arise because the Risk Management Branch reporting structure has already changed three times in three months.<sup>13</sup> Mr Osure's position is that there is a high risk of a further change which places him in direct contact with either one or both of the Persons Named.
- (5) **Insufficient NDIA action to prevent recurrence of bullying:** Mr Osure contends that there have been no changes to the workplace culture, processes or procedures to address current or future bullying allegations. Mr Osure says that the issues he raised have not been investigated; the recent NDIA census (employee survey) identified bullying and harassment as a focus area; Ms H has been temporarily promoted during the period in which Mr Osure's allegations were made; Mr H has been successful in his application for an Executive Level 2 role despite Mr Osure's concerns about his behaviour; and the restructure was pre-planned and was not directed towards addressing Mr Osure's allegations. These matters, it is contended, demonstrate a failure by NDIA to take action against the Persons Named or test the veracity of Mr Osure's claims.

[16] In his reply material Mr Osure contends, in summary, that NDIA and the Persons Named have over-simplified or do not accurately explain aspects of his original complaints against Mr H and Ms H.

[17] NDIA and the Persons Named contend that Mr Osure's application has no reasonable prospects of success and ought to be dismissed. NDIA relies upon the evidence of the Branch Manager, Risk Assessment Mr Fisher, and Acting Assistant Director – Safe and Respectful team, Mr Simon Layley. Both Mr Fisher and Mr Layley gave evidence and were cross-examined. NDIA's position is that proactive steps have been taken to eliminate or significantly reduce any potential risk of future bullying at work by the Persons Named against Mr Osure.

[18] These steps are considered in the analysis that follows.

## Consideration

[19] Even if I were to conclude that Mr Osure has been subjected to bullying at work by the Persons Named (a matter about which I have not heard any evidence and have not made any findings), I would not be empowered to issue an order to stop bullying in this matter.

[20] The restructure of the Risk Management Branch, which I accept was communicated to NDIA employees in November 2024, has had the result that the Persons Named hold no ongoing managerial responsibilities in respect of Mr Osure. The evidence of Mr Fisher, which I accept having regard to his responsibility for managing the relevant Branch and reporting to the Chief Risk Officer, demonstrates that Mr Osure will report to neither of the Persons Named in the revised structure. The types of interactions that the Persons Named had with Mr Osure regarding his work pattern, work performance and work responsibilities will no longer fall within the remit of the Persons Named.<sup>14</sup>

[21] Further, Mr Osure's working arrangements involve the performance of three days' work from his residence, and two days' work from the NDIA branch office in Richmond, Victoria. Both Mr H and Ms H have at all material times worked, and continue to work, on a full-time basis at the NDIA branch in Geelong, Victoria. It follows that Mr Osure will not work in the same physical workplace as Mr H or Ms H. This working arrangement, taken together with the revised structure which limits in any material way the possible interactions between Mr Osure and the Persons Named are such that I cannot be satisfied that there is a risk that Mr Osure will continue to be bullied at work within the meaning of s 789FF(1)(b)(ii) of the Act.

[22] In reaching this conclusion, I have considered Mr Osure's concerns as follows:

- (1) Mr Osure raised a concern that Mr H's current role was held in an Acting position only until April 2025. However, I accept Mr Fisher's evidence that if Mr H was not appointed to the Acting role on a substantive basis upon the conclusion of the expiration of the temporary term in April 2025, Mr H will not return to Mr Osure's team. Mr Fisher makes assurances to this effect in his evidence.<sup>15</sup> It follows that Mr H will not be in Mr Osure's reporting line and presents no real risk of bullying to Mr Osure in the future (notwithstanding Mr Osure's concern that Mr H may continue to hold the view that Mr Osure's work output is too lengthy).
- (2) Mr Osure raised a concern that there is a risk of bullying because of the possibility of Ms H Acting in the Branch Manager role of the Risk Management Branch in the future. However, I accept Mr Fisher's evidence<sup>16</sup> that there is no reason to assume Ms H will be appointed to perform his Branch Manager role on an Acting basis in the future, there are six other employees capable of assuming the Acting role, but even if she is, it would only be for a period while Mr Fisher himself is on leave or temporarily appointed to cover another position on a short-term basis. Further, the Branch Manager role is at least two reporting roles removed from Mr Osure's position. In these circumstances, I consider the concerns advanced by Mr Osure to be too remote such as to give rise to a real risk of future bullying of Mr Osure by Ms H in her performance in an Acting role that she does not hold.

- (3) Mr Osure raised a concern that finalising the Fraud Remediation Plan may require him to interact with Ms H and her team. However, I accept Mr Fisher's evidence<sup>17</sup> that NDIA has implemented safeguards to ensure that any such interaction, should it be necessary in the finalisation of the Plan, is limited. To this end, Mr Fisher gave evidence that Mr Osure can complete and deliver his tasks in respect of the Plan exclusively through his Executive Level 1 direct report, who in turn reports to Mr Murahari (Executive Level 2). Where any feedback or tasks are required by Ms H or her team, these will go through those reporting lines.
- (4) I accept that Mr Osure's role remains within the Risk Management Branch following the restructure, as do the roles held by the Persons Named. The Branch is comprised of 32 employees and reflects the area of Mr Osure's expertise. However, this of itself does not demonstrate that Mr Osure is at a future risk of bullying by the Persons Named. The restructure demonstrates that there is little if any scope for the Persons Named to engage with Mr Osure at work (physically, for reasons described at [21] above, online or through any routine reporting channels).
- (5) I am not persuaded by Mr Osure's contention that the structure now in place in the Risk Management Branch may be transient in nature. I accept the evidence of Mr Fisher<sup>18</sup> that there have not been three separate structures over a three-month period as Mr Osure contends. Rather, as the emails upon which Mr Osure relies demonstrate, *proposed* structures were shared with employees during the consultation process for the purposes of eliciting staff feedback.
- (6) Risk Management Branch meetings are held monthly, are online and focus on project updates. The ongoing requirement that Mr Osure attend these online monthly team-wide meetings at which the Persons Named will be present, is insufficient to give rise to a concern that Mr Osure is at future risk of bullying. This is particularly so in circumstances where the Persons Named will have no managerial responsibility in respect of Mr Osure's work.
- (7) There is no material before the Commission that demonstrates an obligation upon NDIA employees to attend work social events, such as Christmas events. To the extent that Mr Osure elects to attend a social event that is also attended by the Persons Named, there is insufficient evidence to persuade me that Mr Osure would be exposed to a real risk of bullying from the Persons Named in all the circumstances before me.
- (8) Mr Osure contends that NDIA failed to investigate or adhere to its procedure for responding to bullying complaints,<sup>19</sup> which Mr Osure's considers presents a risk of future bullying against him. It is not in dispute that NDIA did not conduct a formal workplace investigation into Mr Osure's complaints. Without drawing any conclusions about the substantive bullying allegations, the evidence of Mr Simon Layley (NDIA's Acting Assistant Director – Safe and Respectful team) indicates that NDIA acknowledged Mr Osure's complaint and made attempts in accordance with its relevant policies to resolve the issues informally on the basis of NDIA's view that the issues were "more suited to informal resolution."<sup>20</sup> This approach did not yield success; NDIA contends that Mr Osure refused to grant it consent to approach Mr H and Ms H and instead commenced this application in the Commission, whereas Mr

Osure submits that he made several attempts to resolve his concerns internally before escalating the application to the Commission. Regardless, the manner in which any investigative processes were undertaken at the workplace does not necessitate a finding at this stage of the proceeding, as it does not bear upon the question of whether there is an ongoing risk that Mr Osure will be bullied at work by Mr H or Ms H.

- (9) The circumstances in this application are materially different to those in *Application by Lacey, Darren*<sup>21</sup> and the conclusions reached in that case are not persuasive in my assessment of s 789FF(1)(b)(ii) on the facts before me.
- (10) I have considered the contention that a bias against Mr Osure was created by sending to Mr Murahari the email from Mr Fisher that referenced the potential for performance management processes to be commenced against Mr Osure. Contrary to Mr Osure's submissions,<sup>22</sup> the email was not sent to Mr Murahari by Mr H. Mr Fisher's evidence was that he sent the email to Mr Murahari in the context of a management handover process.<sup>23</sup> During cross examination, Mr Fisher said that the email was forwarded to Mr Murahari for his awareness, as it was intended to provide clarity on reporting lines and how Mr Fisher wanted the team to operate. Mr Fisher said that the information was relevant to Mr Murahari in circumstances where Mr Osure was transitioning to Mr Murahari's reporting line pending the implementation of the new structure and noting that Mr Osure's application in the Commission was proceeding to a hearing. The focus of s 789FF(1)(b)(ii) of the Act is upon whether Mr Osure is at risk of continued bullying at work by the Persons Named in his application. Mr Murahari is not a respondent to the application. Nor was the email provided to Mr Murahari by a Person Named, on the evidence. Accordingly, the provision of this email to Mr Murahari is not a matter that I consider bears upon the considerations in s 789FF(1)(b)(ii). Nor is there any relevant evidence before the Commission demonstrating that the provision of the email has negatively impacted Mr Osure's working relationship with Mr Murahari.

### **Is there a risk of future bullying?**

[23] The restructure of the Risk Management Branch has had the result that the Persons Named hold no managerial responsibilities in respect of Mr Osure. This is significant, noting that in Mr Osure's application for a stop bullying order, the substance of the allegations raised relate to some element of managerial conduct by the Persons Named. Regardless of whether the restructure was implemented in direct response to Mr Osure's allegations or to improve the operating model of the Branch more broadly, I am satisfied that the measures were implemented in good faith and will effectively protect Mr Osure from any risk of future bullying by the Persons Named.<sup>24</sup>

[24] Further, Mr Osure will not be working in physical proximity of the Persons Named. Mr Osure's desire is to continue working three days per week from his residence and two days per week from the NDIA branch office in Richmond. There is no evidence before the Commission demonstrating that Mr H or Ms H attend the Richmond branch office in the performance of their duties. Their work location is, and remains, in Geelong.

[25] These arrangements, which involve the separation of Mr Osure and the Persons Named in terms of their daily roles and responsibilities, and physically, are sufficient to remove the risk of future bullying.<sup>25</sup> Accordingly, I am not satisfied that there is a risk that Mr Osure will “continue to be bullied at work” by the Persons Named within the meaning of s 789FF(1)(b)(ii) of the Act. Therefore, even if I were to find that Mr Osure has been bullied at work by the Persons Named (which they deny), there is no jurisdiction to make an order to stop bullying in this case.

[26] In these circumstances, I am satisfied that I should exercise my discretion to dismiss the application pursuant to s 587(1)(c) of the Act as it has no reasonable prospects of success.

### **Order and disposition**

[27] For the reasons given, Mr Osure’s application for an order to stop bullying is dismissed.



### DEPUTY PRESIDENT

#### *Appearances:*

*Ms C Apudo* with *Mr J Osure*, for the applicant  
*Mr R Murphy*, of *McInnes Wilson Lawyers*, for the respondents

#### *Hearing details:*

2025.  
Melbourne:  
February 19.

Printed by authority of the Commonwealth Government Printer

<PR787319>

---

<sup>1</sup> *Fair Work Act 2009* (Cth), s 789FD(3)(a)(iii), being a Commonwealth authority

<sup>2</sup> *Fair Work Act 2009* (Cth), s 789FC(2)

<sup>3</sup> *Appeal by Ms Anne Pilbrow* [2020] FWC FB 4373 at [17]

<sup>4</sup> *Application by LP* [\[2015\] FWC 6602](#) at [33], [189]; *James Willis v Capital Radiology Pty Ltd T/A Capital Radiology and Ors* [\[2016\] FWC 716](#) at [5]

<sup>5</sup> Applicant's outline of submissions at p 47

<sup>6</sup> Appendix G of the Applicant's outline of submissions; see also Appendix H for evidence supporting the allegations

<sup>7</sup> Exhibit 1 (Affidavit of Stuart Fisher dated 24 January 2025 (Fisher affidavit)) at [22]

<sup>8</sup> *Ibid* at [32]-[35]

<sup>9</sup> Applicant's outline of submissions at [8]-[45]

<sup>10</sup> [\[2017\] FWC 3136](#)

<sup>11</sup> Appendix A.3 to Applicant's outline of submissions

<sup>12</sup> Appendix C.2 to Applicant's outline of submissions; see also Appendix 19 to the application (26 September 2024 email from Mr Fisher to Mr Osure and Mr H)

<sup>13</sup> Appendix D.1, Appendix E.1-E.2, Appendix A.1 of the Applicant's outline of submissions

<sup>14</sup> Fisher affidavit at [43]

<sup>15</sup> Fisher affidavit at [42]

<sup>16</sup> Fisher affidavit at [40]-[41]

<sup>17</sup> Fisher affidavit at [39]

<sup>18</sup> Fisher affidavit at [29]-[30]

<sup>19</sup> Applicant's outline of submissions in reply at [98]-[120]

<sup>20</sup> Exhibit 2 (Affidavit of Simon Layley dated 24 January 2025) at [29]

<sup>21</sup> [\[2017\] FWC 3136](#)

<sup>22</sup> Applicant's outline of submissions at [26]

<sup>23</sup> See also Fisher affidavit at [46]

<sup>24</sup> *Re Appeal by Pilbrow* [\[2020\] FWCFB 4373](#) at [5], [16]

<sup>25</sup> A similar conclusion was reached in *Re Atkins* [\[2020\] FWC 305](#) at [64]