[2025] FWCFB 168

The attached document replaces the document previously issued with the above code on 5 August 2025.

A minor typographical error in [4] was amended.

Associate to Vice President Gibian

Dated 7 August 2025

DECISION

Fair Work Act 2009
s.604 - Appeal of decisions

Joseph Osure
v
National Disability Insurance Agency, Zoe Honner, Kent Hua
(C2025/5169)

VICE PRESIDENT GIBIAN
DEPUTY PRESIDENT HAMPTON
DEPUTY PRESIDENT FAROUQUE

SYDNEY, 5 AUGUST 2025

Appeal against decision [2025] FWC 1346] of Deputy President Millhouse at Melbourne on 14 May 2025 in matter number AB2024/747 – Stop-bullying application – Commission can only make a stop bullying order if satisfied the worker has been bullied and there is a risk the worker will continue to be bullied – Whether dealing with the existence of future risk as a threshold matter was open and reasonable – Whether risk to be assessed with reference to the conduct of individuals – Permission to appeal granted – Whether error in the approach or findings – No appealable error – Appeal dismissed.

[1] The appellant, Joseph Osure, applies for permission to appeal, and if permission is granted, to appeal the decision of Deputy President Millhouse issued on 14 May 2025 concerning an application he made for an order to stop bullying under s 789FC of the *Fair Work Act 2009* (Cth) (the **Act**).[1] The Deputy President dismissed the application on the basis that there was no risk that the worker will continue to be bullied at work and, for that reason, the application had no reasonable prospects of success.

[2] Mr Osure has been, and remains, employed with the National Disability Insurance Agency (the **NDIA**), having been engaged in January 2020. He is employed by NDIA as an Australian Public Service (**APS**) 6 full-time employee. He holds the role of Senior Fraud Officer. On 7 August 2024, Mr Osure was assigned to the Risk Advisory Team to contribute to the delivery of a Fraud Remediation Plan. In this role, he originally reported directly to Mr Kent Hua, who in turn reported to Ms Zoe Honner, who at the time of the application, held an Executive Level 2 role, as the overarching Director of Risk and Projects Advisory Supervisor. Ms Honner reported to Mr Stuart Fisher, the Branch Manager, Risk Management.

[3] On 2 October 2024, Mr Osure applied to the Commission for an order to stop bullying. In the application, Mr Osure named Ms Honner and Mr Hua as the individuals whose alleged conduct represented the bullying behaviour relied upon to support the application (collectively, the **Persons Named**). In addition, the application named the NDIA as a respondent. We will refer to the Persons Named and the NDIA collectively as the NDIA in this decision for convenience.

[4] As recorded in the Deputy President's decision, the alleged bullying conduct described in the application was:[2]

(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 Hua during the formal complaint process;
(r) factually incorrect accusation of not engaging with Ms Honner 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.

[5] The NDIA's position on the application was that it had, including through the Persons Named, 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. The NDIA contends that this was reasonable management action undertaken in a reasonable manner.

[6] The decision dealt with what the Deputy President described as a threshold issue concerning whether the Commission could be satisfied that there is a risk Mr Osure would continue to be bullied at work by the Persons Named within the meaning of s 789FF(1)(b)(ii) of the Act. We will return to the statutory provisions shortly. The practical context in which that issue arose was that the Risk Management branch of the NDIA was restructured. The consequences of the restructure were communicated to employees in November 2024. Of immediate relevance, the Deputy President found that, following the restructure, Mr Osure would report to neither of the Persons Named in the revised structure.[3] The types of interactions that the Persons Named had with Mr Osure regarding his work pattern, work performance and work responsibilities would no longer fall within the remit of the Persons Named. Further, the Deputy President found that Mr Osure's working arrangements would involve the performance of three days' work from his residence, and two days' work from the NDIA branch office in Richmond, Victoria.[4] Both of the Persons Named have at all material times worked, and continue to work, on a full-time basis at the NDIA branch in Geelong, Victoria.

[7] Without overlooking the broader statutory context, the immediate provisions considered by the Deputy President concern the requirements for the Commission to make a stop-bullying order in s 789FF of the Act 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.
>
> (2) In considering the terms of an order, the FWC must take into account:
> (a) if the FWC is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body—those outcomes; and
> (b) if the FWC is aware of any procedure available to the worker to resolve grievances or disputes—that procedure; and
> (c) if the FWC is aware of any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes—those outcomes; and
> (d) any matters that the FWC considers relevant.

[8] The Deputy President dealt only with s 789FF(1)(b)(ii) regarding the existence of a relevant future risk that Mr Osure will continue to be bullied at work, and did not make findings about the first limb; namely s 789FF(1)(b)(i).

The Decision

[9] The Deputy President determined that given the restructure, the Commission would consider whether the circumstances were such that a future risk as required by s 789FF(1)(b)(ii) could be found. This approach, and the treatment of the issue as a threshold point, was contested

by Mr Osure whose position on the issue itself we consider was accurately summarised in the Decision as follows:

> **[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:
>
> (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 bulling is to recognise that bullying had occurred and in this respect, relies upon the decision in *Application by Lacey, Darren*.
>
> (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. 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.
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> (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." This statement is said to be unreasonable and unfair and has been provided to Mr Murahari.
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> (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. 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.
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> (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.
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> **[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.[5]

(Footnotes Omitted)

[10] The NDIA contended that Mr Osure's application had no reasonable prospects of success and ought to be dismissed. The NDIA relied upon the evidence of the Branch Manager, Risk Assessment Mr Fisher, and Acting Assistant Director – Safe and Respectful team, Mr Simon Layley. The NDIA's position was 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.

[11] The Deputy President made detailed factual findings as to the impact of the restructure and comprehensively addressed the submissions and contentions advanced by Mr Osure and the NDIA.[6] We have had regard to the findings made by the Deputy President and the basis of her findings. However, it is not presently necessary to set out the findings in detail.

[12] The conclusions reached by the Deputy President were summarised as follows:

> **[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.
>
> **[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. 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.
>
> (Footnotes Omitted)

Grounds of appeal and Mr Osure's submissions

[13] The following grounds of appeal, restated to reflect the basis for each given during the hearing of the appeal, have been advanced in this matter as follows:

> **Ground 1** – the Deputy President ignored the NDIA's role in the assessment of future risk

Ground 2 – the Deputy President failed to consider all of the orders sought

Gound 3 – the Deputy President failed to consider the duty of care owed by the NDIA

Ground 4 – the Deputy President disregarded case law which supported the proposition that it was necessary to consider the bullying allegations and outcome as part of assessing future risk

Ground 5 – the Deputy President failed to take into account the present and ongoing risk as a direct result of a "Review Decision" issued by the NDIA in response to the bullying compliant

Ground 6 – the decision to deal with the future risk issue 'prematurely', denied Mr Osure the capacity to demonstrate that the "Review Decision" was not reasonable management action

Ground 7 – the Decision relied upon Mr Langley's evidence 'proven' to be false

Ground 8 – there was a failure to 'call' (refusal to order the attendance of) relevant witnesses – Mr Goldsmith who was involved in the handling of Mr Osure's complaint

Ground 9 – the Deputy President denied procedural fairness by refusing Mr Osure's request to expand the hearing to include the first element of s 789FF(1)

Ground 10 – there was a failure to require the attendance or statement of Mr Anderson, the HR Business Partner, who reached certain conclusions about the process used to deal with Mr Osure's complaint and the response of the NDIA

Ground 11 – there was a denial of information requested by Mr Osure relating to resolution pathways within the NDIA for dealing with complaints

Ground 12 – the Deputy President wrongly accepted the assurance and practice given by management in the face of contradictions and omissions

Ground 13 – there was a denial of a request for 'evidence' from the NDIA concerning the process adopted to (wrongly) reach conclusions about the nature of Mr Osure's complaint

[14] We observe that Mr Osure grouped the grounds of appeal as follows:

(a) Errors of law/mistakes in the application of the law – grounds 1 to 6;
(b) Significant errors of fact – ground 7;
(c) Denial of procedural fairness – grounds 8 to 10;
(d) Relevant information not taken into account – ground 11; and
(e) Reliance on irrelevant information – grounds 12 and 13.

[15] It is convenient to summarise the submissions made utilising these groupings, noting that some of the grounds are clearly related and the headings given in the notice of appeal do not always accord with the substance.

Errors of law/mistakes in the application of the law – grounds 1 to 6

[16] Mr Osure contends that the assessment of a future risk of bullying should have included the role played by the NDIA. That is, the NDIA is a respondent to the application and a consideration of its actions or inaction was relevant to the existence of future risk and whether the case had reasonable prospects of success.

[17] Mr Osure also contends that the failure to take into account the scope and nature of the orders sought, including those directed at the NDIA, and the factors required by s 789FF(1((b)(i) of the Act, was an error. He also relied upon the fact that orders under this provision could be made against the employer, and not only individuals alleged to have engaged in bullying behaviour. In this regard, he submitted that dismissing the case prematurely, without looking at s 789FF(1)(b)(i), means the Commission could not effectively consider the merit of orders necessary and within its power, to eliminate or mitigate the risk of future bullying. He also contended, in effect, that the narrowing of the focus to the risk associated with the Persons Named had the potential to permit employers to avoid the making of an order by simply moving those involved without dealing with the underlying issues.

[18] Mr Osure further contends that the NDIA has a duty of care (including work health and safety obligations) to him and assessing future risk in the manner undertaken by the Deputy President meant that this duty was not considered. This included overlooking the absence of a proper investigation into the allegations involved.

[19] As to the case law, Mr Osure contends that the Deputy President ignored decisions which indicated that it was necessary to consider whether there had been bullying conduct when assessing future risk, at least where the applicant remained in the workplace. This included the case of *Kandelaars v Murrays Australia Pty Limited; Andrew Cullen* [2017] FWC 3136 (***Kandelars***). Further, he contends, in effect, that the Deputy President attempted to distinguish the present case without reasons or foundation.

[20] We observe that the reference in the appeal grounds to the "Review decision" is to an email from Mr Fisher that was provided to Mr Osure and Mr Kent on 26 September 2024.[7] In this regard, Mr Osure contends that the continuing existence of this email was an unwarranted negative mark on his employment record and, of itself, represented an ongoing risk of bullying. This, and other factors, were also said not to be reasonable management action.

Significant errors of fact – ground 7

[21] The substance of this ground is that Mr Osure submits that the Deputy President relied upon the evidence of Mr Langley, which he contends contained several incorrect statements including those made about the "Review decision". Further, despite all of the inconsistencies, his evidence (wrongly) played a prominent role in the Decision.

Denial of procedural fairness – grounds 8 to 10

[22] Mr Osure contends that the Deputy President's failure to require the attendance of Mr Goldsmith and Mr Anderson at the hearing of the matter to give evidence was a denial of procedural fairness. Mr Goldsmith, as the person who was handling his complaint, and Mr Anderson, the relevant HR Partner within the NDIA, would have informed the Commission about the processes and discussions undertaken by the NDIA. This, he contends, would have enabled the Deputy President to make an informed decision about the bullying allegations and whether the NDIA had taken sufficient action to "address" these.

Relevant information not taken into account – ground 11

[23] Mr Osure further contends that the Deputy President's failure to require the NDIA to confirm its criteria to classify the resolution pathways, including those where no formal investigation is suited, (according to the NDIA) meant that the Commission failed to take relevant information into account.

Reliance on irrelevant information – grounds 12 and 13

[24] Mr Osure submits that the Deputy President wrongly relied upon "assurances" that the management structure of the Risk division would not change, despite what he contends was and is ongoing change. In this regard, he also contended that it was an error to admit and rely upon the statement of Mr Layley's statement, in part, because he was not directly involved in the investigation of the complaints. He further contends that the denial of his request by the Deputy President to require the NDIA to shed more light on the process adopted to deal with his complaint was an error.

[25] Mr Osure also contended that there were various public interest grounds relevant to the determination of permission to appeal. These included that it would be appropriate for the Full Bench to:

(a) Review the appropriateness of considering the future risk component of s 789FF(1)(b)(ii) in isolation from and prior to consideration of the first element, s 789FF(1)(b)(i);
(b) Establish 'guidelines' to ensure that the Commission considered the future risk posed by all respondents in a matter of this kind;
(c) Affirm the requirement to consider any present or crystallised risk when assessing future risk; and
(d) Consider the role of the Commission in the health and wellbeing of applicants when exercising 'rights' to dismiss applications of this kind.

Respondents' submissions

[26] The NDIA opposes the grant of permission to appeal in this matter. It contends that there is no matter of importance or general application raised in the appeal, and the relevant principles in a matter of this kind are clear and consistent. Further, it contends that Mr Osure has identified no appealable error of the kind contemplated in *House v The King*, or at all.

[27] The substantive submission of the NDIA was that the Deputy President's analysis that the restructure implemented by the NDIA had effectively separated Mr Osure from the named individuals and there was no ongoing supervisory or reporting relationship between them, meaning there was no future risk of bullying by those individuals toward Mr Osure, was open on the evidence and does not reflect any error of law or fact.

[28] The NDIA further contends that the Commission's jurisdiction to make orders under Part 6-4B of the Act is confined to conduct engaged in by an individual, or group of individuals, and does not extend to findings of bullying against a body corporate, such as the NDIA. Further, the NDIA submits that the Deputy President correctly applied the statutory test under s 789FD(1)(a)(ii) by appropriately confining her analysis to whether there was a risk that Mr Osure would continue to be bullied at work by the named individual respondents.

[29] As to the authorities relied upon by Mr Osure, the NDIA contends that they do not stand for the proposition that the Commission must make a finding of bullying as a necessary step to assessing the future risk issue. Further, the NDIA contends that *Kandelarrs* involved a hearing about whether there was bullying conduct and whether orders should be made. The fact that no future risk was found, despite the finding of bullying conduct, was a product of that case.

[30] The NDIA contends that the grounds relating to the "Review decision" are without foundation. It submits that, while no full and formal investigation was conducted for the reasons set out at paragraph [22](8) of the decision, steps were taken to remove any risk of bullying against Mr Osure. It is noted that the NDIA's ability to progress internal complaint procedures was limited by the Mr Osure's withdrawal of consent and refusal to engage further in the process. In addition, the NDIA contends that the Deputy President considered these matters and correctly concluded that the manner in which any investigative processes were undertaken at the workplace did not necessitate a finding at this stage of the proceedings. The Deputy President was also satisfied that there was no evidence before the Commission indicating that the email had adversely impacted Mr Osure's working relationship with Mr Murahari, the leader of the Enabling Services Team in which Mr Osure is now working.

[31] The NDIA also referred to the fact that neither Mr Fisher, nor Mr Murahari, were named as respondents in the application. As such, the Deputy President correctly considered the "Review Decision" matter not to be relevant to considerations pertaining to s 789FF(1)(b)(ii) and there is no appealable error in either of Grounds 5 or 6.

[32] The NDIA contends that the criticisms made of Mr Layley's evidence relate to a statement as to the NDIA's position and that no findings were made about the substantive bullying application or its investigation. The NDIA further submits that any findings made would have been within the discretion of the Deputy President having heard the evidence. In terms of the attack on the credibility of management on the appeal, the respondents contend that this is based in large part upon hearsay material, some of which was not before the Deputy President, and there was no proper basis for the admission of further "evidence" on appeal.

[33] The NDIA rejected the grounds of appeal contending, in effect, that the denial of the request for additional witness evidence or documents from the NDIA was a denial of procedural fairness. In that regard, it submitted that these procedural decisions were within the discretion

of the Deputy President and the evidence was not relevant to the future risk issue and no error was made.

Permission to appeal

[34] Subject to certain caveats that are not presently relevant, a person aggrieved by a decision of the Commission may appeal the decision only with permission under s 604(1) of the Act. The Commission must grant permission to appeal if satisfied that it is in the public interest to do so in accordance with s 604(2). Otherwise, the Commission has a broad discretion as to whether to grant permission to appeal. Considerations traditionally considered relevant to the question of permission to appeal include that the decision is attended with sufficient doubt to warrant its reconsideration, and that substantial injustice may result if leave is refused. It will rarely be appropriate to grant permission to appeal unless an arguable case of appealable error is demonstrated. This is so because an appeal cannot succeed in the absence of appealable error. However, the fact that the member made an error is not necessarily a sufficient basis to grant permission to appeal.

[35] We have decided to grant permission to appeal in this matter as the appeal raises some important issues with respect to the stop bullying jurisdiction of the Commission, including the conduct of proceedings by members of the Commission. However, for reasons set out below, the appeal should be dismissed.

Consideration of the appeal

[36] We observe at the outset that the Deputy President dismissed the application under s 587(1)(c) of the Act on the basis that it had no reasonable prospects of success. No issue was raised on appeal concerning whether that provision is available in matters of this kind. As the Deputy President directly considered and determined whether there was jurisdiction to make an order under s 789FF(1), nothing turns on the Deputy President dismissing the application pursuant to s 587(1)(c). In that regard, the Deputy President found that the application had no reasonable prospects of success because she was not satisfied that there is a risk that Mr Osure will continue to be bullied at work by the Person Named and consequently, she concluded that there was no jurisdiction to make a stop bullying order.

[37] We have previously set out the terms of s 789FF of the Act. In applying that provision, the Commission has previously found:

(a) 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) (the existence of future risk of relevant bullying) is not and will not be met, then an application for an order to stop bullying cannot succeed.[8]

(b) An order under s 789FF operates prospectively and is directed at preventing the applicant worker from being bullied at work. The Commission is specifically precluded from making an order requiring the payment of a pecuniary amount, hence it cannot make an order requiring a respondent to pay an amount of compensation to an applicant. The legislative scheme is not directed at punishing

past bullying behaviour or compensating the victims of such behaviour. It is directed at stopping future bullying behaviour.[9]

(c) The Commission is given wide powers to make such preventative orders as it considers appropriate. The exercise of those powers must be informed by, but are not necessarily limited to, the workplace bullying found to have occurred. Orders must be directed towards the prevention of the applicant worker being bullied at work in the future by the individual or group of individuals concerned, be based upon appropriate findings, and have regard to the considerations established by s 789FF(2) of the Act.[10]

(d) Section 789FF does not limit the persons against whom orders can be made. The Commission may at least make orders directed to the behaviour of individuals found to have engaged in workplace bullying as well as their respective employer(s)/principal(s).[11]

(e) The assessment under s 789FF(1)(b)(ii) is based on a consideration as to whether there is a present risk that relevant bullying will continue at the time the application is being considered by the Commission and, if there is not, whether the Commission is satisfied that those circumstances will not change in the foreseeable future.[12]

(f) The Commission must be satisfied that there is a real (and not simply conceptual or hypothetical) risk.[13]

[38] This appeal raises two main issues. Firstly, the operation of the second limb of s 789FF(1)(b) in paragraph (ii), concerning the requirement for a future risk of bullying and whether this is focused upon the Persons Named. Secondly, whether it is appropriate to deal with the future risk limb as a threshold point separated from findings about the alleged bullying conduct in s 789FF(1)(b)(i).

[39] Turning to the first issue, the effect of s 789FF(1)(b)(ii) is that the Commission must be satisfied there is a risk that the worker will continue to be bullied at work by the individual or group of individuals who it has found have bullied the worker in the past. An "individual" in this context means the natural persons, and not the corporate entities, involved. If the question is being considered at a preliminary stage, the analysis will ordinarily be directed at whether there is a risk of future bullying by the individuals or group of individuals whose alleged behaviour is cited in the application as constituting bullying at work.[14]

[40] In *Mekuria v MECCA Brands Pty Ltd t/a Mecca Cosmetica* [2019] FWCFB 2771; (2019) 289 IR 105 (***Mekuria***), in dealing with an appeal from a decision where the Commission had dealt with both aspects of s 789FF(1) together, the Full Bench stated:

> **[29]** Apart from the requirement for an application to have been made under s 789FC, s 789FF(1) establishes two prerequisites: first, the Commission must be satisfied that the worker has been bullied at work by an individual or group of individuals and, second, the Commission must be satisfied that there is a risk that the worker will continue to be bullied at work by the individual or group. The use of the definite article in s 789FF(1)(b)(ii) in connection with the individual or group of individuals indicates that they must be the same as the individual or group

> of individuals considered for the purpose of s 789FF(1)(b)(i). That is, it is not sufficient to satisfy the second condition in s 789FF(1)(b)(ii) by demonstrating that there is a risk of being bullied at work by individuals other than those who have been found to have engaged in bullying pursuant to s 789FF(1)(b)(i).

[41] Although the stop-bullying provisions in the Act are cast broadly and permit orders to be made which operate with respect to persons other than the individuals named in an application, the future risk element of s 789FF(1)(b)(ii) is narrowly defined by the legislation. The Commission can only make orders under s 789FF(1) if it is satisfied that there is a risk the worker will continue to be bullied by the individual or group of individuals it is satisfied have bullied the worker in the past. This has an undeniable impact on the capacity for the Commission to address bullying in the workplace more generally. However, that is a matter for Parliament.

[42] The second issue raises what we consider is properly a matter of discretion. The Commission is not required in all cases to determine both elements of s 789FF(1) of the Act. Whether it is appropriate to deal with the future risk element as a threshold matter will depend upon the circumstances of each case. It will not always be appropriate to deal with the future risk as a preliminary issue, particularly where findings are being made in the context of ongoing working relationships where the applicant worker and the relevant individuals continue to work for the employer/principal concerned. In those circumstances, significant caution should be exercised before a member of the Commission adopts the course of determining whether there is a risk a worker will continued to be bullied without fully considering the past allegations of bullying behaviour.

[43] In some cases, it will be important to understand and make findings about the existence and nature of any bullying conduct in order to properly assess whether there is a future risk. The nature of the bullying, and those responsible for or involved in the relevant conduct, might only be fully revealed upon the hearing of evidence in relation to past conduct. In other cases, the scope of the alleged bullying may be clear, and the remedial actions taken, or change in circumstances, clear enough that it would be reasonable to deal with the future risk issue as a preliminary point. In making that assessment, the purpose of the provision, namely, to make orders where appropriate to prevent future relevant bullying conduct, should be considered. If that outcome has already been achieved, orders cannot be made.

[44] Another reason for caution in dealing with the future risk issue as a preliminary point where the applicant worker and the named persons continue in the workplace, is that identified by the Full Bench in *Mekuria*:

> **[33]** It may be accepted that anti-bullying matters may not necessarily proceed upon a fixed and static set of bullying allegations and that, somewhat like an industrial dispute, they may involve an ongoing and evolving workplace situation. This is more likely to be the case where the bullying allegations are made against a group of persons at the workplace, since this will involve the dynamic of a network of inter-relationships with the capacity to give rise to new developments operating conterminously with the conduct of the proceedings in the Commission. However, we do not consider that is the situation that confronted the Commissioner. As we have stated, the proceedings went forward entirely on the basis of bullying allegations against a clearly identified group of individuals, and Mecca responded to the case on this basis. ... … But more importantly Ms Mekuria's application for orders to stop bullying by Ms Kelso, Ms Mantacas or Ms Chiruvu was never sought to be amended in any appropriate or procedurally

> fair fashion. The most that could be said is that one of the letters sent to the Commissioner on the morning of the hearing, as we have earlier set out, sought some new orders against her "supervisor and manager". We do not consider that it is reasonably arguable that the Commissioner should in the circumstances have entertained this as an amendment to the application (nor is any such proposition specifically adverted to in the amended appeal notice). As the Commissioner appropriately observed, Ms Mekuria's new allegations could be addressed via a fresh and separate anti-bullying application if they are seriously to be pursued.

[45] In this case, we consider that it was open to the Deputy President to adopt the approach that she did in dealing with the future risk issue. The Deputy President correctly understood the effect of s 789FF(1)(b)(ii) of the Act. In relation to the decision to deal with the question of future risk as a threshold matter, it was reasonably open to the Deputy President to adopt that course without hearing and making findings about the existence of the alleged past bullying conduct in the circumstances of this case. We consider that the Deputy President appreciated the scope of the alleged bullying conduct, and that the impact of the restructure on any potential for future bullying conduct by the Persons Named directed towards Mr Osure could be reasonably assessed.

[46] We appreciate that Mr Osure had sought a full review of his allegations and the manner in which they were dealt with by the NDIA. Based upon the appeal, this included reference to the subsequent conduct of other individuals who were not named as respondents to the initial application. The observations of the Full Bench in *Mekuria* are broadly apt if Mr Osure has a basis to raise new or different allegations, albeit that this might extend to other allegations made by Mr Osure not related to the Persons Named. Internal grievance and review processes should be utilised first, where it is safe and reasonable to do so. In addition, if the working arrangements of Mr Osure following the restructure do not continue as is presently intended and he reasonably believes there is a renewed risk of bullying by the Persons Named, it might then be open to him to bring a fresh application.

[47] The other grounds of appeal raised by Mr Osure broadly relate to the two main issues identified by us and dealt with above. The grounds concerning the refusal to require additional evidence or witnesses concern procedural decisions that were well within the reasonable procedural discretion of the Deputy President given the scope of the hearing. No error has been established in relation to the procedural decisions of the Deputy President. Further and in any event, we are not satisfied that appealable errors have been demonstrated by Mr Osure on those or any other grounds. The Deputy President gave detailed consideration to the evidence concerning the potential future interactions between Mr Osure and the Persons Named. No error has been demonstrated in the finding of the Deputy President that the effects of the restructure of the Risk Management Branch were such as to remove the risk of future bullying. Given the evidence, it was open to the Deputy President to make the various factual findings she did and to make the ultimate finding that there was no relevant future risk of bullying of Mr Osure by the Persons Named.

Conclusions and disposition of the appeal

[48] For the reasons set out earlier, we grant permission to appeal. However, in the absence of appealable error, this appeal must be dismissed.

[49] The Full Bench make the following orders:

(a) Permission to appeal is granted; and
(b) The appeal is dismissed.

VICE PRESIDENT

Appearances:

C Apudo for Mr Osure.
R Murphy and *C Salter* of McInnes Wilson Lawyers for the respondents.

Hearing details:

16 July 2025.
Melbourne (in person).

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[1] *Joseph Osure* [2025] FWC 1346.

[2] *Joseph Osure* [2025] FWC 1346 at [9].

[3] *Joseph Osure* [2025] FWC 1346 at [20].

[4] *Joseph Osure* [2025] FWC 1346 at [21].

[5] References in the Decision to Mr H and Ms H are references to the Persons Named.

[6] *Joseph Osure* [2025] FWC 1346 at [22].

[7] Appendix 19 to the application.

[8] *Atkinson v Killarney Properties Pty Ltd T/A Permapleat Schoolwear and Michael Palm* [2015] FWCFB 6503 at [21]; *Re Pilbrow* [2020] FWCFB 4373 at [17].

[9] *Re McInnes* [2014] FWCFB 1440 at [9].

[10] *Churches v Jackson* [2016] FWCFB 2367 at [32].

[11] See the summary of cases provided by the Full Bench in *South Eastern Sydney Local Health District v Lai* [2019] FWCFB 1475 at [21]-[23].

[12] *Greenan v Vilensky* [2025] FWCFB 61 at [71].

[13] *Re LP* [2015] FWC 6602; (2015) 256 IR 1 at [50].

[14] *Churches v Jackson* [2016] FWCFB 2367 at [27]-[29]; *Tunsted v Busways North Coast Pty Ltd* [2020] FWCFB 25; (2020) 292 IR 141 at [29].