



DECISION

Fair Work Act 2009

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

Mr Suresh Upadhyay
(AB2025/292)

DEPUTY PRESIDENT SLEVIN

SYDNEY, 12 JANUARY 2026

Orders by consent – orders made on an interim basis

[1] This is an application under s. 789FC of the *Fair Work Act 2009* by Mr Suresh Upadhyay for orders to stop bullying. The application is made against Mr Upadhyay’s employer Shree Sanatan Dharm Sabha of NSW Inc (**SSDS**) and Ajay Singh. SSDS runs the Shree Ram Krishna Mandir, a temple located in Austral in Sydney NSW. Mr Upadhyay is head priest at the temple. Mr Singh is president of SDSS.

[2] Mr Upadhyay alleges that he has been subjected to bullying by Mr Singh. SDSS and Mr Singh deny the allegations and contend that the conduct complained of amounted to reasonable management action. The application has been the subject of conciliation and was listed for hearing today.

[3] At the commencement of the hearing the parties requested time to discuss settlement of the claim. Following an adjournment of the proceedings the parties requested that I make an interim decision under s. 589(2) of the Act and make consent interim orders. The orders sought confine the communications between the parties to work related matters, require the respondents to provide written clarification of the applicant’s duties, require rostering protocols to be put in place, and protect the applicant from victimisation. The parties ask that the orders operate for a period of 9 months.

[4] The parties are hopeful that with the interim orders in place the working relationship between Mr Upadhyay and those who manage the temple can be restored. It is anticipated that matter will be resolved in the 9 month timeframe sought. The parties’ proposed orders seek that the matter be otherwise dismissed.

[5] Section 589 deals with interim and procedural decisions. In *Virginia Wills v Grant, Marley & the Government of NSW* [2020] FWCFB 4514 (*Wills*) the Full Bench of the Commission at [34] agreed with the reasoning in the first instance decision of Deputy President Colman in *Mayson v Mylan Health Pty Ltd* [2020] FWC 1404 to the effect that s 589(2) is not an independent source of power to issue interim orders as s 595 makes clear that the Commission may deal with a dispute ‘only if (it) is expressly authorised to do so under or in accordance with another provision of this Act.’ The Deputy President said, and the Full Bench agreed, that s 589(2) is not such a provision. The matter before the Deputy President was a

bullying matter. The Full Bench also affirmed the reasoning that in such an application s 789FF confers jurisdiction on the Commission to make an anti-bullying order if, and only if, it is satisfied that a worker has been bullied at work, and that there is a risk that the worker will continue to be bullied at work.

[6] The Full Bench concluded that s 589(2) did not act independently of s 789FF to permit the Commission to make an interim anti-bullying order. An order under s 789FF, interim or otherwise, can only be made if the preconditions in s 789FF(b) are met. That is, the Commission is satisfied that the applicant has been bullied and there is a risk that the bullying will continue. As I have not reached the requisite state of satisfaction regarding those matters in these proceedings I will not make an interim bullying order.

[7] That does not mean that I cannot make the orders sought. The Full Bench in *Wills* went on to describe the operation of s 589 as procedural in nature in the sense that it facilitates the effective and efficient exercise of the Commission's substantive powers. The effect of the orders sought by the parties is to adjourn the proceedings for a period of 9 months to allow matters raised in the application to be addressed. The orders specify steps the parties intend to take to address those matters. Section 589(1) provides that the Commission may make decisions as to how, when and where a matter is to be dealt with. The power has been used to stay Commission proceedings awaiting the outcome of proceedings in other jurisdictions that may resolve or have an impact on the resolution of the Commission proceedings¹ on the basis that such orders facilitate the effective and efficient exercise of the Commission's powers.

[8] I consider that the orders sought, styled as they are by the parties as interim orders, are capable of being made at this stage of the proceedings. I also consider that they will facilitate the effective and efficient exercise of the Commission's power to make bullying orders.

[9] The matter was filed in April 2025. It has been the subject of a number of conferences and report backs since that time. The applicant has been off work for a period of time due to illness. SSDS engaged an independent consultant to investigate the allegations. The report from the investigator made a number of recommendations that have been accepted by SSDS and are to be implemented. SDSS is an organisation that is run ostensibly by volunteers. The applicant is the only employee. The parties have agreed on a means to deal with the application that addresses the underlying concerns raised by the applicant and they seek a reasonable timeframe in which to address those concerns and allow the employment relationship to return to a harmonious state.

[10] I consider the orders are consistent with the exhortation in ss 577 and 578 of the Act that the Commission's functions be exercised in a fair and just manner, promote harmonious and cooperative workplace relations and take into account equity, good conscience and the merits of the matter.

[11] Order 6 states that the matter is otherwise dismissed. Counsel for the respondents explained that this order will not prevent the applicant from agitating the matters raised in the application should the expected resolution of the matters raised in the application not be resolved after 9 months. With that clarification, I am prepared to make that order. The matter will remain open and the parties have leave to approach the Commission should further assistance be required.

[12] The consent interim orders will be published separately.



DEPUTY PRESIDENT

Appearances:

*Mr G Hill of Counsel for the Applicant
Mr I Latham of Counsel for the Employer*

Hearing details:

12 January 2026
Sydney

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¹ See for example *MMA Offshore Vessel Operations Pty Ltd t/as MMA Offshore v Construction, Forestry and Maritime Employees Union* [2025] FWC 2409 at [7]; and *Renee Darby v Grace Removals (Australia) Pty Ltd* [2025] FWC 2202