

[2015] FWC 6556
FAIR WORK COMMISSION

DECISION

Fair Work Act 2009

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

Mrs Rachael Roberts

v
VIEW Launceston Pty Ltd as trustee for the VIEW Launceston Unit Trust T/A View Launceston; Ms Lisa Bird; Mr James Bird
(AB2015/160)

DEPUTY PRESIDENT WELLS

LAUNCESTON, 23 SEPTEMBER 2015

Application for an FWC order to stop bullying

[1] On 25 February 2015 Ms Rachael Roberts filed an application pursuant to s.789FC of the *Fair Work Act 2009* (the Act) for orders to stop bullying at work. The application alleged that bullying occurred in the course of Ms Roberts' employment as a real estate agent with the VIEW Launceston franchise located in Tasmania (View), and alleged two persons working at View, Mr James Bird and Mrs Lisa Bird (the named individuals), had bullied her.

[2] View filed a response to the application on 5 March 2015. The named individuals filed responses on 6 March 2015. Ms Roberts was self-represented. View and the named individuals were represented by Mr Damien Durkin, employee relations consultant.

[3] Pursuant to directions of the Commission, on 1 June 2015, Ms Roberts filed an outline of submissions, witness statements and documentation in support of her application. This, together with the original application, alleged 18 separate instances of unreasonable behaviour towards Ms Roberts which were said to constitute bullying at work within the definition contained in s.789FD of the Act. These documents advised of an alleged risk to health and safety for Ms Roberts, and indicated particulars of the basis upon which it was contended that there was a risk that Ms Roberts would continue to be bullied at work.

[4] Also pursuant to directions of the Commission, on 15 June 2015, submissions and witness statements and other documents were filed by View and the two named individuals (the respondents). These documents responded to Ms Roberts' documentation and also stated that as an anti-bullying policy had been created and put in place, there was no requirement for orders to be made by the Commission. Any continuing risk of Ms Roberts being bullied at work was denied, and the making of orders under s.789FF was opposed.

[5] The matter was initially listed for hearing on 22-24 June 2015; however these dates were vacated, due to Ms Roberts' required attendance for jury duty. The matter was, for reasons which it is

unnecessary to state here, unable to be listed for hearing until 27-29 July 2015 in Launceston.

Facts

The witnesses

[6] Ms Roberts gave evidence on her own behalf by way of a submission/statement [1](#) which annexed a number of documents and was the subject of extensive cross-examination. Ms Roberts also adduced evidence from Mr Glen Boyd,[2](#) a postal worker and Mr Allan Hart. Mr Hart is a Director and company secretary of VIEW Australia and a 50 percent shareholder in VIEW Launceston. He made himself available at the request of Ms Roberts.

[7] The named individuals gave evidence (Mrs Bird, [3](#) Sales Administrator and Mr Bird,[4](#) Principal and Co-director), together with another employee of View, Mr Andrew Claxton,[5](#) Property Consultant. Each of the named individuals and Mr Claxton provided witness statements and were cross-examined.

[8] In some cases the factual issues between the parties are explained by what I have determined are genuine differences in recollection or perception of events. However there are a number of matters that are at odds between the witnesses (which require resolution) and which relate to their opinions and characterisations of a number of events and conduct. I consider that Mr Claxton's evidence was unsatisfactory in relation to a number of matters.

Background matters

[9] Ms Roberts is a real estate agent, having commenced work for View in November 2012 as a Property Consultant. She is a single mother of four boys and has worked in the real estate industry for over 10 years.

[10] Mr Bird is the Principal and Co-director of View and his wife, Mrs Bird, also works at View as the Sales Administrator. Mr and Mrs Bird set up the business of View on 1 July 2010 [6](#) and it is a franchise business, in connection with View Australia and View Tasmania. Mr Claxton began working at View as a property consultant in or around May 2014, although the exact date was not in evidence.

[11] Over the period of approximately November 2013 and January 2015, Ms Roberts alleges she was subjected to bullying behaviour at work. An incident occurred on 29 January 2015 between Mrs Bird and Ms Roberts. Ms Roberts took two weeks sick leave. Ms Roberts returned to work on 14 February 2015. [7](#) On 20 February 2015 Ms Roberts was certified unfit for work by her doctor and was provided with a medical certificate and has not returned to work since that date. Ms Roberts made a workers' compensation claim[8](#) which is in dispute and also this application[9](#) pursuant to s.789FC(1).

[12] Ms Roberts stated that the behaviour she experienced whilst at work resulted in her being unable to sleep, being depressed and highly anxious, resulting in the prescription of medication by her general practitioner and treatment from a psychologist. [10](#)

[13] The parties agreed that in approximately February 2014 a meeting occurred between Mrs Bird and Ms Roberts. It is inconclusive from the evidence whether Mr Bird was present for the entire meeting or only the beginning of this meeting. It was Mrs Bird's evidence that she arranged the meeting because she was concerned that Ms Roberts had been discourteous to her and did not like her. [11](#) Mrs Bird said that Ms Roberts had apologised to her in this meeting if she had done anything

to cause Mrs Bird to think she was not respected. It was Ms Roberts' evidence that she had never done anything to Mrs Bird which was disrespectful, but that she apologised so the meeting could be concluded. It was Mr Bird's evidence that following the meeting of February 2014, he thought that the work relationship between Ms Roberts and Mrs Bird was functioning well.

[14] The evidence in this matter provided that both Mr and Mrs Bird supported the Board of View Tasmania writing to Rachael in 2014 about the good job she was doing as she had had "...a bit of a purple patch from a sales point of view...". [12](#) It was also clear from the evidence that on at least one occasion Mr and Mrs Bird provided a commission advance for Ms Roberts when she had experienced a difficulty. There are some examples in evidence, such as this, which indicate a functioning and productive relationship.

[15] Since Ms Roberts made this application, View has established an anti-bullying policy and reference manual, which has been rolled out to the workplace. [13](#)

[16] It is common ground between the parties that: [14](#)

- Ms Roberts is a worker as defined in the Act, pursuant to s.789FC(2) of the Act;
- The First respondent (View) is a constitutionally-covered business pursuant to s.789FD(3) of the Act;
- Ms Roberts held a reasonable belief that she had been bullied at work (see s.789FC(1) of the Act; and
- The behaviour complained of occurred whilst Ms Roberts was at work in a constitutionally-covered business, pursuant to s.789FD(1)(a) of the Act.

Allegations of bullying

[17] I now set out the 18 allegations of unreasonable behaviour as explained by Ms Roberts. [15](#)

[18] Ms Roberts alleged that she was belittled and humiliated by Mrs Bird when in 2013, prior to October, [16](#) an incident occurred when an Australia Post employee, Glen Boyd, made a delivery to Ms Roberts at the workplace and this behaviour was unreasonable (Allegation 1).

[19] Witness evidence in relation to Allegation 1 was provided by Ms Roberts, Mr Boyd and Mrs Bird. The incident involved the delivery of a parcel addressed to Ms Roberts at her workplace. Mr Boyd approached Ms Roberts with the parcel and asked her to sign for it. At this time there was an altercation involving Mrs Bird, Mr Boyd and Ms Roberts. Whilst there was some conflict about from what direction Mrs Bird approached Mr Boyd and Ms Roberts, this conflict is not material to the matters that are required to be determined. Mr Boyd's and Ms Roberts' evidence was that Mrs Bird acted in an aggressive and rude manner which caused embarrassment and humiliation to Ms Roberts. It was said this behaviour involved Mrs Bird grabbing the parcel scanner from Ms Roberts, snatching the parcel off the desk, speaking in a rude, loud and abrupt manner and saying, among other things, "I am telling you both now, Rachael is not to sign for items and it is to stop as from now". [17](#) Mr Boyd said he was shocked by the actions and tone of voice of Mrs Bird; that he could see that Ms Roberts was red in the face; and that he felt that Ms Roberts had been belittled. Ms Roberts' evidence confirmed Mr Boyd's version of events in all material respects and Ms Roberts said she felt embarrassed, humiliated and upset and that she had witnessed other people signing for parcels. [18](#)

[20] Mrs Bird's evidence was that she was not aggressive, rude or abrupt in her dealings with Mr

Boyd and Ms Roberts, and that she was concerned that Mr Boyd was not known to her and he was entering an area of the business which was outside of the reception area. Mrs Bird confirmed that she told Mr Boyd she would sign for the parcel and denied saying that Ms Roberts was not allowed to sign for parcels. The respondent did not present any facts to substantiate a basis for the Commission to reject the evidence of Ms Roberts, corroborated by Mr Boyd, in relation to the behaviour displayed by Mrs Bird during the altercation. Mr Boyd was an independent witness who I considered to provide reliable evidence. I prefer Mr Boyd's evidence and this was supported by the evidence of Ms Roberts in all material considerations. I am satisfied Mrs Bird's behaviour toward Ms Roberts during this exchange was unreasonable. Allegation 1 is made out.

[21] Ms Roberts alleged that she was treated differently to other work colleagues in that Mrs Bird would not allow her to adjust the temperature setting on the air conditioning unit when she was cold, but would allow other employees in the workplace to do so and this was unreasonable behaviour (Allegation 2).

[22] Mr Bird, Mrs Bird and Ms Roberts gave evidence in relation to Allegation 2. It was Ms Roberts' evidence that she was aware that the front area of the office did get hot, but that as the controlled air was blowing straight on her 19 where she sat at her desk she would often get cold in the office and had to get up several times a day and try to warm up. She said the air flow made her sick with headaches and colds and that she asked if the temperature could be turned up. Ms Roberts said Mrs Bird told her she was not allowed to touch the air conditioning unit. Ms Roberts also said that Mr Bird, Mrs Bird and Mr Claxton could adjust the temperature on the unit when they liked.20

[23] Mrs Bird denied ever telling Ms Roberts not to adjust the temperature on the air conditioning unit. 21 Mr Bird's evidence was that there was a design issue within the workplace that made the regulation of air temperature difficult and that he had given a direction to staff that they were not to adjust the temperature on the air conditioning unit. Mr Bird gave evidence that it was possible other staff had adjusted the unit but he had given the direction that the temperature should not be adjusted. Mr Bird did not recall Ms Roberts suggesting an air conditioning unit should be installed in the front area of the office.22 Nothing was put to Mr Claxton in relation to this allegation so there is no evidence on which I can rely as to Mr Claxton's involvement with adjusting the temperature of the air conditioning unit.

[24] I am satisfied on the evidence that the direction not to adjust the temperature on the air conditioning unit was made by Mr Bird to staff, and that he did so in a genuine attempt to regulate the air temperature in the front of office area. I do not consider this to be unreasonable. Allegation 2 is not made out.

[25] I offer the obiter comment that an employer has an obligation to provide a safe work environment for all staff. Action as to regulation of a comfortable temperature of the work environment, to the benefit of all employees, should be a priority for View.

[26] Ms Roberts alleged that she was treated differently in the workplace as Mrs Bird insisted Ms Roberts had to wear the full work uniform, whilst other employees were allowed to wear other clothing and this treatment was unreasonable (Allegation 3).

[27] Mr Bird, Mrs Bird and Ms Roberts gave evidence in relation to Allegation 3. It was Ms Roberts' evidence that the View uniform did not fit correctly and that she wished to purchase a professional suit to wear to work, as she had done at a previous workplace. Ms Roberts said that at the end of October 2014 she had a conversation with Mrs Bird in the office about this and that she was told by Mrs Bird that "I was not, under any circumstances, to wear anything bar the uniform into the

office.” [23](#) Ms Roberts said that Carol Hill and Garry Jessup were not wearing uniforms at that time, but they had only just started with the business and that Mr Claxton had told her he did not think there was a uniform for men.[24](#) Subsequently Ms Hill was provided a uniform and Mr Jessup advised Ms Roberts he hadn’t been offered a uniform.

[28] It was Mr Bird’s evidence that View provides \$800 per annum to some staff to purchase items of work uniform and that when that money is accessed, it is expected that the uniform will be worn. [25](#) Mr Bird said that Mr Jessup’s employment contract does not contain a uniform allowance and he was never offered a uniform.[26](#) Mrs Bird’s evidence is that View offers some employees \$860 per annum for the purchase of uniform items and that some employees do not have this allowance included in their employment contract. Mrs Bird said that she told Rachael that View supply suits and uniforms through the payment of the allowance and that is the preferred clothing option for those employees.

[29] Ms Roberts did not deny being in receipt of an allowance for the provision of a uniform to a value of \$860 per year. There was little evidence led in relation to the arrangements for other employees and their work clothing. However I do not consider it unreasonable for the respondents to expect that the uniform be worn by Ms Roberts as she was in receipt of the uniform allowance. Allegation 3, that Ms Roberts was treated differently and that this treatment was unreasonable was not made out.

[30] Ms Roberts alleged that she was treated differently in the workplace to other employees in that Mrs Bird deliberately delayed performing any administration work involving Ms Roberts’ property listings or potential listings to make Ms Roberts look unprofessional and that this behaviour was unreasonable (Allegation 4).

[31] Allegation 4 involved evidence from Ms Roberts, Mr Bird and Mrs Bird. Ms Roberts provided two examples of matters which she said showed Mrs Bird behaving unreasonably. The first matter involved the paperwork and administrative process of a silent listing. Ms Roberts said in the first week of work in January 2015 she placed the silent listing paperwork for a property into Mrs Bird’s in-tray where it remained for nine days without being actioned. Ms Roberts said that Mr Claxton was in the office and she noticed his work was getting done as she was checking the in-tray for the progress of her work. [27](#) Ms Roberts said on the ninth day at 5pm she showed the document to Mr Bird, explaining that her work was not being processed by Mrs Bird. She said that Mr Bird said nothing to her at that time, but that the following day the paperwork was actioned.[28](#) Ms Roberts said normally it should only take one day to action a silent listing sheet.[29](#)

[32] It was Mr Bird’s evidence that that he recalled bringing the matter up with Mrs Bird and being informed that a mistake had been made in that the silent listing sheet was incorrectly placed into an unrelated file. He did not recall Ms Roberts showing him the silent listing sheet. [30](#) Both Mr Bird and Mrs Bird were cross-examined on this matter. Mrs Bird stated that the silent listing sheet had been incorrectly filed and she found the listing sheet after Mr Bird had questioned her about it.

[33] Having considered the evidence of the three witnesses in this matter at first instance, I prefer the evidence given by Ms Roberts. I am satisfied that the silent listing sheet was present in the in tray of Mrs Bird for the nine days and that it was shown to Mr Bird at 5pm on the ninth day by Ms Roberts, which was the catalyst for Mr Bird querying the delayed processing with Mrs Bird. I am of the view that the actions of Mrs Bird in not processing the silent listing sheet were unreasonable.

[34] The second matter involved an urgent rental appraisal for a property involving Ms Ryan, a client of Ms Roberts in early November 2014. Ms Roberts’ evidence was that she asked Mrs Bird to immediately carry out the appraisal as the rental value was needed to assist Ms Ryan with her

mortgage loan application. Ms Roberts said the appraisal was carried out by Ms Carol Hill the following day, however despite Ms Roberts advising Mrs Bird of the urgency of the rental appraisal, Mrs Bird posted the rental appraisal letter to Ms Ryan rather than send it electronically. Ms Roberts provided an email string from 6 November to 11 November 2014 [31](#) which showed Ms Ryan chasing the rental appraisal letter and Ms Roberts' responses to her. Ms Roberts said the normal procedure at View was to email the rental appraisal letter and to post the original. Ms Roberts said the documentation was not ready for the bank and the purchaser changed her mind and did not proceed with the sale.

[35] Mrs Bird provided no evidence in relation to this matter. The respondent did not present any facts which provides for the Commission to reject the evidence of Ms Roberts, and the contemporaneous email exchanges relating to the provision of the rental appraisal. I am satisfied Mrs Bird's action in not following usual procedure and mailing the rental appraisal to the client, when she knew it was urgent, was unreasonable behaviour. Allegation 4 is made out.

[36] Ms Roberts alleged that Mrs Bird behaved unreasonably toward her when Mrs Bird replied to Mrs Roberts in relation to Mrs Roberts' verbal offer to answer the telephone (Allegation 5).

[37] Witness evidence which is relevant to Allegation 5 was provided by Ms Roberts, Mr Bird and Mrs Bird. Ms Roberts' evidence was that she had been advised by Mrs Bird that she was not to answer the telephone when Mrs Bird was in the office, but that Mr Claxton and Mr Bird were allowed to answer the phone. [32](#) Ms Roberts said that at the time of this incident, Mr Claxton was working for View and was present in the office, as was Mr Bird. However, Ms Hill and Mr Jessup had not commenced employment. I establish the timeline therefore to be between May and end of October 2014. [33](#) Ms Roberts said Mrs Bird was in the office and at the photocopier when the telephone was ringing. Ms Roberts said she wasn't sure if she should answer it and that she enquired of Mrs Bird if whether she would like her to answer the phone. It was said Mrs Bird answered her in a rude and hostile manner saying "Well yes". [34](#) Ms Roberts said that Mrs Bird's manner had been so rude that it prompted Mr Claxton to send Ms Roberts an email about Mrs Bird's behaviour, although this email was not placed into evidence.

[38] It was Mr Bird and Mrs Bird's evidence that View had established a '5 rings policy' which required that every phone call had to be answered within it ringing five times. Mrs Bird's evidence was that she was annoyed and angry [35](#) on the day in question as she was busy at the photocopier and no-one was answering the phone call in accordance with the procedure. Mrs Bird did not deny speaking to Ms Roberts in the way described.

[39] The timelines in the evidence established that the incident occurred prior to the employment of Ms Hill and Mr Jessup. The evidence also provided that the '5 rings policy' established by Mr Bird was not rolled out to the workplace until after Ms Hill and Mr Jessup were employed. [36](#) Accordingly, the '5 rings policy' was not in existence at the time of the incident referred to in Allegation 5. Ms Roberts denied any knowledge of such a policy. Therefore, there is no basis for the policy to be relied on to establish a reason for Mrs Bird's demeanour towards Ms Roberts in her exchange. All of the evidence considered, even if the '5 rings policy' were to have been in place at that time, other people were also capable of answering the phone and it was unreasonable for Mrs Bird to behave in the manner she did towards Ms Roberts, when Ms Roberts was the person who was offering to assist. I am of the view that Mrs Bird's behaviour was unreasonable. Allegation 5 is made out.

[40] Ms Roberts alleged that she was treated differently to other employees in the workplace in that Mr Bird and Mrs Bird would not allow her to take her work laptop home, and could not bring her

own personal computer into work and this was unreasonable (Allegation 6).

[41] The relevant witness evidence relating to Allegation 6 was provided by Ms Roberts, Mr Bird and Mrs Bird. Ms Roberts stated that in December 2013 she was told by Mr Bird that she could no longer take her laptop home, due to internet and office network security. [37](#) Ms Roberts said she pointed out to Mr Bird there was no difference between what she had been doing and other employees bringing their own computers into work. Ms Roberts said that Mr Bird told her Mr Allan Hart, from head office, was concerned about a security risk.

[42] Mr Bird's evidence was that the laptop Ms Roberts was using was owned by View and had been provided to help her out when she commenced employment. He said the other property consultants provided their own laptops. Mr Bird said that Mr Hart had directed that office computers were not to be taken home due to concerns over internet viruses, security and insurance coverage issues. It was Mr Bird's evidence that the directive had come from Mr Hart and he had simply passed it on. [38](#) I am satisfied on the evidence that whilst other employees are taking their laptops to and from work and home, internet and computer network security for the workplace will be a concern; it was not unreasonable for View to direct Ms Roberts not to take the laptop home as it was their property. This is the case regardless of whether the directive was issued by Mr Hart or Mr Bird. Ms Roberts was not in the same situation as other employees as the other employees provided their own laptops for work. Allegation 6 is not made out.

[43] Ms Roberts alleged that she was disadvantaged in her work as Mr Bird and Mrs Bird directed clients away from her and to another employee and that behaviour was unreasonable (Allegation 7).

[44] It was Ms Roberts' evidence that leads coming into the office for new property listings were skewed to Mr Claxton and that Mr Bird had assured her that this skewing was only to occur for a short term of two months. Ms Roberts stated that the skewing continued on for longer than that period and that she did not agree to this practice. Ms Roberts said that Mrs Bird also put an enquiry through to Mr Claxton on a property which Mrs Bird knew had been listed by Ms Roberts.

[45] It was Mr Bird's evidence that he had a conversation with Ms Roberts to explain that when Mr Claxton commenced with View, all new leads would be directed to him to assist him in establishing a client base. Mr Bird said this occurred in the real estate industry and that when Ms Roberts had started at View, she had received the same skewing of leads to assist her in establishing her client base. [39](#) Mr Bird was cross-examined on this point and was unshaken in his evidence.

[46] I am satisfied on the evidence that the method of skewing leads to new starters in the real estate industry is well understood and practiced and is not unreasonable. That Ms Roberts was a recipient of this practice when she started with View would support its application. It is logical that a property consultant starting out in the real estate industry would need some assistance in establishing themselves for fear of simply not being able to 'put food on the table' for a period of time. The practice itself does not fit a 'type' of behaviour that would normally be described as bullying behaviour. [40](#) I am of the view Allegation 7 is not made out.

[47] Ms Roberts alleged that Mrs Bird displayed bullying behaviour by refusing to undertake a change to an online listing which had been requested, which resulted in the loss of Ms Roberts' property listing at Gravelly Beach (Allegation 8).

[48] The evidence relating to Allegation 8 was provided by Ms Roberts, Mr Bird and Mrs Bird. It was common ground between the three witnesses that the clients for this property listing were difficult, and were fussy in relation to the way the property was described online. It was Ms Roberts'

evidence that her clients requested her to make a further change to the description of the property and she then requested Mrs Bird to make that change. Ms Roberts said that Mrs Bird refused to make the change and as a result the clients withdrew their property listing with Ms Roberts.

[49] Mr Bird denied that the property was withdrawn by the clients due to Mrs Bird not making the change to the online property description [41](#) and advised there had been correspondence from the clients indicating a lack of communication from Ms Roberts, [42](#) although this correspondence was not provided as evidence. Mrs Bird's evidence was that at no time did she refuse to carry out any changes for Ms Roberts. [43](#)

[50] Having considered the evidence concerning this allegation, particularly the "fussy" nature of the clients and the numerous requests placed on the business by those clients, I am not satisfied, on the balance of probabilities that the property was withdrawn for sale for the reasons identified by Ms Roberts and Allegation 8 is not made out.

[51] Ms Roberts alleged that she was humiliated when Mrs Bird acted unreasonably by referring to a property which was situated next door to Ms Roberts' residence, as being located in a not very nice area of Newstead, knowing that Ms Roberts lived next door (Allegation 9).

[52] The evidence of Ms Roberts, Mr Bird and Mrs Bird are relevant to Allegation 9. It was Ms Roberts' evidence that following a discussion with the owner of the property next door to her own residence in Newstead, the owner of that property requested a rental appraisal and a sales appraisal to assist her to make a decision about her investment property. Ms Roberts stated that Mrs Bird refused to provide her with the rental appraisal value stating that it was none of Ms Roberts' business. Ms Roberts said she again asked Mrs Bird for the information in front of Mr Bird and was told by Mrs Bird that the property would only attract a rental of \$220 per week as it was not a nice area and "who would want to live there anyway?" [44](#) Ms Roberts said it was known to Mrs Bird at the time that the property was located next door to Ms Roberts' residence and that the property was subsequently rented for \$300 per week.

[53] Mrs Bird denied making the comments as described above. [45](#) Mr Bird's evidence was that he could not recall a comment being made about the area not being a very nice area. Mr Bird stated in his evidence that it was usual that Mrs Bird would not tell a sales consultant the value attributed to a rental appraisal and he confirmed the property was now rented for \$300 per week.

[54] It is a fact that the evidence of Ms Roberts and Mrs Bird is directly conflicting. Mr Bird's evidence is that he did not recall the comments having been made by Mrs Bird. Having considered the evidence, I am not satisfied, on the balance of probabilities that Allegation 9 has been made out.

[55] Ms Roberts alleged that Mrs Bird behaved unreasonably and damaged her reputation with one of her clients when Mrs Bird put that client into a collection service for an outstanding account, despite Ms Roberts arranging that the account was to be held until a sale of the client's property was achieved (Allegation 10).

[56] The witness evidence of Ms Roberts, Mr Bird and Mrs Bird is relevant to Allegation 10. It was Ms Roberts' evidence that due to the personal circumstances of her client Mr Brass, she had approached Mr Bird and received confirmation that they would not require him to pay an outstanding account until his property had been sold. Ms Roberts said that later she received an abusive phone call from Mr Brass because he had been put into the collection service by Mrs Bird. [46](#) Ms Roberts said that when she spoke with Mr and Mrs Bird and reminded them that Mr Bird agreed that payment of the account would be made when the property sold, Mrs Bird said that she did the accounts and it

had nothing to do with Mr Bird or Ms Roberts.[47](#)

[57] In cross-examination it was put to Mr Bird that he had a conversation with Ms Roberts about Mr Brass. Mr Bird could recall the discussion, but not all of the content of that discussion. Mr Bird confirmed he had a telephone discussion with Mr Brass about his account and Mr Bird said he could not confirm or deny if he agreed to hold off on collection of the account until Mr Brass' property was sold. [48](#)

[58] It was Mrs Bird's evidence that she always speaks to Mr Bird prior to putting a client into a collection service and that she would have advised Ms Roberts prior to putting her client into the collection agency.

[59] I am satisfied on all the evidence relating to this allegation that the evidence of Ms Roberts is to be preferred. The cross-examination of Mr Bird on this point was evasive and elicited that he had discussions with Ms Roberts about the financial situation of Mr Brass and that he had a phone discussion with Mr Brass about it. I have concluded that Mr Bird did agree to hold the account until Mr Brass' property sold. I do not accept the evidence, on the balance of probabilities, that Mrs Bird discussed this matter with Ms Roberts prior to referring Mr Brass to the collection agency. If that had have been the case, Ms Roberts would have reminded Mr Bird of the conversations in an attempt to stop any referral to a collection agency. Accordingly, I find the actions of Mrs Bird in placing Mr Brass into the collection agency to be unreasonable in the circumstances and designed to damage the relationship between Ms Roberts and her client. Allegation 10 is made out.

[60] Ms Roberts alleged that Mrs Bird would listen in on her telephone conversations at work, and then question her about the content of those conversations which made Ms Roberts feel uncomfortable (Allegation 11).

[61] The witness evidence relating to Allegation 11 is inconclusive. Considering the examples given and the nature of the evidence provided by Ms Roberts and Mrs Bird - that is that it is a small workplace and you cannot help but overhear people's conversations - I do not consider Allegation 11 to be substantiated.

[62] Ms Roberts alleged that she was treated differently to other employees in the workplace in that Mrs Bird would not acknowledge her in the morning and would deliver other peoples photocopying or printing to them, but not to Ms Roberts, which was unreasonable (Allegation 12).

[63] The witness evidence in relation to Allegation 12 from Ms Roberts and Mrs Bird is directly conflicting. No evidence from other witnesses was relevant. It is a matter of which evidence is to be preferred. Having considered the evidence at first instance, I prefer the evidence of Ms Roberts and have concluded that Mrs Bird did not address Ms Roberts appropriately when Ms Roberts arrived at work of a morning and that she did distribute employees' photocopying to them and excluded Ms Roberts. Allegation 12 was made out.

[64] Ms Roberts alleged that Mrs Bird either ignored her in the office or spoke to her, at times, in an abrupt way and generally treated her differently to other employees (Allegation 13).

[65] This Allegation 13 is similar to Allegation 12, in that much of the evidence was directly conflicting between Ms Roberts and Mrs Bird. Ms Roberts provided contemporaneous emails between herself and Mr Claxton as to the nature of the relationship between Ms Roberts and Mrs Bird. I found the testimony of Mr Claxton to be, on most matters, implausible, contrived or both. However, the emails between himself and Ms Roberts are indisputable and indicate that Mrs Bird

was considered unapproachable and that Ms Roberts was “*in the gun*”. [49](#) I am satisfied Allegation 13 was made out.

[66] Ms Roberts alleged that in September 2014 (the exact date was not in evidence), Mr Bird together with Mr Claxton, made inappropriate comments to her that were embarrassing and humiliating, in that suggestive comments were made about her having a sexual relationship with one of her female clients, as this client was known to be a lesbian (Allegation 13A).

[67] The relevant evidence relating to Allegation 13A was led by Ms Roberts and Mr Bird. The following evidence was provided by Ms Roberts:

“I felt embarrassed, because I actually thought that maybe my client had heard and I ended up winding up the conversation pretty quickly with her. The reason that the comment, “That’s no good, they should pull their finger out” - she actually had her property listed with L. J. Hooker at the time and we had made arrangements to get photos back so she didn’t have to pay for them again and they were being rather slack with that, and I just dropped that comment and from that point on James and Andrew started laughing and I’m not sure what they were saying amongst each other. As soon as I hung up the phone, James jumped in and said, “You should get up there lickety-split,” which Andrew thought was hysterical and I just said, you know, “Ha ha, very funny,” and sort of tried to brush it off. And then Andrew continued with, “Maybe we should come up there and watch,” implying that I was having or should have a relationship with this lady because of her sexual orientation, so I - yes, I felt it was very inappropriate. I felt very embarrassed and found it to be really quite sleazy.”

[68] Ms Roberts said that she spoke with Mr Bird later that day to say that behaviour was inappropriate. It was Mr Bird’s evidence that he did not recall this particular incident. He confirmed that there were jokes between him, Mr Claxton and Ms Roberts. He said he could not recall Ms Roberts telling him that he had said anything inappropriate or offensive. [50](#) Mr Claxton did not provide any witness evidence on this matter.

[69] Mr Bird’s evidence on this point was not convincing. I prefer the evidence of Ms Roberts and I am of the view that the conversation occurred as described by her. I am satisfied Allegation 13A was made out.

[70] Ms Roberts alleged that Mrs Bird tried to humiliate her or make her look incompetent. This arose from Mrs Bird advising Mr Allan Hart that she did not receive a message from Ms Roberts to ring him, and also by that Mrs Bird misrepresented an event to Mr Hart (Allegation 14).

[71] This allegation involved evidence from Ms Roberts, Mrs Bird, Mr Claxton and photographs taken on 28 July 2015. [51](#) It was Ms Roberts’ evidence that Mr Hart rang the View office in Launceston on a date which was not in evidence, requesting a business registration number of View. Mrs Bird was not in the office and Ms Roberts answered the phone. Ms Roberts said she did not know exactly what she was looking for but Mr Hart directed her to look for a certificate of registration which should be located in the reception area of the office. Ms Roberts advised Mr Hart she could not locate the certificate; that she would get Mrs Bird to ring him back; and that she left a sticky note on Mrs Bird’s computer with the message to ring Mr Hart. Ms Roberts said later Mr Hart rang back and Mrs Bird told him that she didn’t get the message to ring him and that Ms Roberts couldn’t have bothered to look because the certificates were there. Ms Roberts said she subsequently found the certificates which were on the wall, but behind a View advertising banner which was set up in the reception area.

[72] It was Mrs Bird's evidence that in October/November 2014 she had a call from Mr Hart and had to explain to him that the registration certificate was on the wall in the reception area. Mrs Bird said the certificate was partially covered by the banner and still visible, but that Ms Roberts had not been able to locate it. Mrs Bird said that she confirmed with Mr Hart the certificates were on the wall and the conversation then ended. Mrs Bird was not cross-examined on this point.

[73] Mr Claxton's evidence in relation to this allegation was unsatisfactory and at times illogical. I place no weight on his evidence.

[74] Mr Hart was not questioned on these events. His evidence would have been material to the consideration of this allegation. Having considered the evidence available to me, I do not consider Allegation 14 was made out.

[75] Ms Roberts alleged that Mrs Bird had a belittling attitude towards her and would make unreasonable comments to Ms Roberts (Allegation 15).

[76] It was Ms Roberts evidence that during a work day, of which the date is not in evidence, Mrs Bird left the office and did not say how long she would be away. Ms Roberts said she answered a phone call which was for Mrs Bird and took a message, but could not let the person know when Mrs Bird was expected back. Ms Roberts said that she asked Mrs Bird, on her return to the office, to let her known how long she would be out so she could let people know. It was Ms Roberts' evidence that Mrs Bird responded by saying "I don't have to answer to you Rachael". Ms Roberts said this situation was difficult because she never knew how long Mrs Bird would be out of the office at any time.

[77] It was Mrs Bird's evidence that she did not recall a conversation with Ms Roberts to that effect. 52 Having regard for the evidence as described in this allegation and other findings I have made relating to belittling behaviour and unreasonable responses of Mrs Bird, I am of the view events occurred as described by Ms Roberts and that Allegation 15 is made out.

[78] Ms Roberts alleged that Mrs Bird humiliated her when, without notice or explanation, Mrs Bird started locking the desk drawer which contained the postage stamps, which made Ms Roberts feel like she wasn't trusted in the workplace as there was only Mr Bird, Mrs Bird and Ms Roberts working in the office at that time (Allegation 16).

[79] Mr Bird, Mrs Bird and Ms Roberts' witness evidence is relevant to this allegation. Ms Roberts stated that at the time the drawer started to be locked; only she, Mr Bird and Mrs Bird worked in the office. Ms Roberts said that she was no longer able to access the stamps in the drawer and that she felt like she wasn't trusted. It was Ms Roberts' evidence that Mr Bird had access to a key, as did Mrs Bird. Ms Roberts said the petty cash was kept elsewhere and therefore locking the drawer due to the petty cash being there was not a plausible excuse for the action.

[80] It was Mrs Bird's evidence that when the business first commenced the petty cash used to be stored in a filing cabinet, but when the business started employing other people, it was moved into the drawers at reception. She said she started locking the drawers because on consecutive occasions she was unable to balance the petty cash. 53 Mr Bird's evidence broadly confirmed the evidence of Mrs Bird.

[81] Whilst there is some conflict as to the historic location of the petty cash, I am satisfied that this has no material relevance to the matters to be determined in this allegation, and I am of the view that Mr and Mrs Bird made a reasonable business decision to lock the drawers in the reception area as it

contained the petty cash and stamps. This is not unreasonable behaviour and Allegation 16 was not made out.

[82] Ms Roberts alleged that Mrs Bird acted in a belittling and aggressive way towards her on 29 January 2015 during an impromptu one-on-one meeting called by Mrs Bird (Allegation 17).

[83] The evidence relevant to Allegation 17 was led by Ms Roberts, Mr Bird and Mrs Bird. There was significant evidence led at hearing as to an after-hours telephone call between Ms Roberts and Mr Bird during the evening of 28 January 2015. Much of that evidence went to the motivation for Ms Roberts calling Mr Bird. It should be noted that the conflict that arose as to the motivation of the telephone call is not relevant to the matters that require the Commission's determination. Whilst I have had regard for that evidence by way of context, I now deal with the material evidence.

[84] It was Mr Bird's evidence that on the evening of 28 January 2015, Ms Roberts telephoned him and said she thought she wasn't getting a fair representation of properties in the front window of the business premises. Mr Bird said that following the phone call with Ms Roberts, he discussed the matter with Mrs Bird who advised of the system she employed to advertise properties in the front window and she also told Mr Bird she was concerned about the number of times Ms Roberts rang after hours. [54](#) Mr Bird said he told Mrs Bird to sit down with Ms Roberts the following morning and "...have a talk and work this out". [55](#)

[85] Mr Bird said a meeting did occur the following day, Friday, 29 January 2015; that he did not attend the meeting; and that he left the office straight after it commenced. Mr Bird stated that he was then telephoned by Mrs Bird who said things had gotten heated on both sides and that Ms Roberts had walked out of the office. Mr Bird and Ms Roberts entered into a series of text messages later that day [56](#) about what occurred in the meeting between Ms Roberts and Mrs Bird (the incident). Mr Bird said at that stage he did not think that Ms Roberts had resigned, although a text message exchange with Mr Roberts that day indicates he queried with her whether she had resigned. [57](#) Mr Bird said he encouraged Ms Roberts to take some time to think about her employment; and that on the following Monday he said he received a medical certificate from Ms Roberts for two weeks sick leave.

[86] It was Ms Roberts' evidence that she telephoned Mr Bird on the evening of 28 January 2015 as she was excited to advise him that she had sold a property at Deviot. She said whilst on the phone to Mr Bird, she took the opportunity to ask him if there was any reason that none of her listed properties were present in the front window of the business. When cross-examined on this matter, Ms Roberts said she did not approach Mrs Bird about the front window advertisements because she found her unapproachable. Ms Roberts said that the following day, in the morning of 29 January 2015, Mrs Bird approached her at work and demanded they go to the tea room. She said in the tea room she was aggressively accused by Mrs Bird of being disrespectful and undermining Mrs Bird's authority because she had spoken to Mr Bird about the front window. Ms Roberts said on several occasions during the meeting, Mrs Bird called her a "naughty little school girl running to the teacher". [58](#)

[87] Ms Roberts said Mrs Bird had pointed at her, told her to sit down when she had tried to leave the meeting and had stood in her way in front of the door. [59](#) Ms Roberts said the conduct was humiliating and hostile and left her in a very distressed state [60](#) and that she left the office crying. Ms Roberts said that when she was sitting in her car after leaving the office it occurred to her that Mrs Bird might make a Facebook comment about the incident. Upon checking Facebook, only minutes after the incident, she found that Mrs Bird had deleted her as a Facebook friend. [61](#)

[88] It was Mrs Bird's evidence that early in 2015 Ms Roberts started ringing up Mr Bird complaining about her and procedures, [62](#) although under cross-examination Mrs Bird could only identify one occasion which involved the property listings in the window on 28 January 2015. Mrs Bird said that on the morning of 29 January 2015, when Ms Roberts arrived at work, she asked her if she could have a quick word with her. Mrs Bird said they went into the meeting room, she shut the door and they both sat down. Mrs Bird said she asked Ms Roberts if she still had issues with her because she had complained about the window to Mr Bird. Mrs Bird said she tried to explain the process of window advertisements, but that Ms Roberts became argumentative and stated that Mr Bird had told her she could discuss issues of concern with him. Mrs Bird said she told Ms Roberts that her behaviour reminded her of "...a school child or girl going to the teacher to tell on the other child".[63](#)

[89] The evidence of Ms Roberts as to Mrs Bird defriending her on Facebook immediately after the incident is supported by a contemporaneous text message between Ms Roberts and Mr Bird. [64](#) It was not refuted by Mrs Bird in evidence. This action by Mrs Bird evinces a lack of emotional maturity and is indicative of unreasonable behaviour, the likes of which I have already made findings on. The 'school girl' comment, even accepting of Mrs Bird's version of events, which I am not, is evidence of an inappropriate dealing with Ms Roberts which was provocative and disobliging. I am of the view that Mrs Bird took the first opportunity to draw a line under the relationship with Ms Roberts on 29 January 2015, when she removed her as a friend on Facebook as she did not like Ms Roberts and would prefer not to have to deal with her. I am satisfied that the evidence of Ms Roberts, as to the incident on 29 January 2015, is to be preferred and that the allegation of unreasonable behaviour by Mrs Bird in Allegation 17 is made out.

[90] As at the time of the hearing in late July 2015, a medical certificate clearing Ms Roberts for a return to work had been issued by Dr Nathan Lucas, but only on the following basis - "Fit to return to normal duties as long as the Fair Work Commission hearing occurs and anti-bullying measures are put in place in the workplace." [65](#) Therefore no arrangements had been agreed for Ms Roberts to return to work. Ms Roberts' submissions were that she could not return to work without her s.789FC application being concluded. Mr Durkin for the first named respondent and the named individuals submitted that as an anti-bullying policy and manual had been put in place by the Directors of View, Ms Roberts would be able to return to work as there was no risk of bullying reoccurring.

Power to make anti-bullying orders

[91] The Commission, in certain circumstances, has power to make anti-bullying orders, pursuant to s.789FF of the Act as follows:

(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 of individuals.

[92] Section 789FF requires three conditions to be met in order for the Commission to exercise its power to make orders. These are:

- (1) A worker must have made an application in accordance with s.789FC;
- (2) The Commission must be satisfied that bullying of the applicant has occurred at work by the individual or individuals named in the application; and
- (3) The Commission must be satisfied that there exists a risk of the applicant continuing to be bullied at work by the individual or individuals named in the application.

[93] The first condition, relating to making an application, must be done in accordance with s.789FC, which requires that an application may only be made by “A worker who reasonable believes that he or she has been bullied at work”. Further, “**worker**” for the purposes of the relevant part of the Act is defined in s.789FC(2) as having the same meaning as defined in the *Work Health and Safety Act* 2011. [66](#) As stated earlier in this decision, it is common ground between the parties that Ms Roberts is a “**worker**” as defined by the Act; that she reasonably believed she had been bullied at work; that the behaviour complained of was behaviour that occurred at work; and that the business View) is a constitutionally-covered business (see s.789FD(1)(a)). I am satisfied that this is the case.

[94] The second condition, satisfaction of the Commission that bullying has occurred by the named individuals, requires the Commission to determine, through findings of fact, whether the alleged behaviour occurred. It is then that the Commission must determine whether the behaviour was unreasonable. In *Re SB* [\[2014\] FWC 2104](#) at paragraphs [41] and [43] Hampton C found:

“[41] Having regard to the approach urge by the authorities, the concept of individuals ‘repeatedly behaving’ unreasonably implies the existence of persistent unreasonable behaviour but might refer to a range of behaviours over time. There is no specific number of incidents required for the behaviour to represent ‘repeatedly’ behaving unreasonably (provided there is more than one occurrence, nor does it appear that the same specific behaviour has to be repeated. What is required is repeated unreasonable behaviour by the individual or individuals towards the applicant worker or a group of workers to which the applicant belongs...”

[43] ‘Unreasonable behaviour’ should be considered to be behaviour that a reasonable person, having regard to the circumstances, may consider to be unreasonable. That is, the assessment of the behaviour is an objective test having regard to all the relevant circumstances applying at the time.”

[95] It is also necessary for the Commission to determine that element of s.789FD(1) that relates to the relevant behaviour being one which “creates a risk to health and safety”. I respectfully agree with the conclusions of Hampton C in *Re SB* at paragraphs [44] and [45] which are in line with authorities referred to in that decision as to workplace health and safety legislation:

“[44] The unreasonable behaviour must also create a risk to health and safety. Therefore there must be a causal link between the behaviour and the risk to health and safety. Cases on causation in other contexts suggest that the behaviour does not have to be the only cause of the risk, provided that it was a substantial cause of the risk viewed in a common sense and practical way. This would seem to be equally applicable here.

[45] A risk to health and safety means the possibility of danger to health and safety, and is not

confirmed to actual danger to health and safety. The ordinary meaning of ‘risk’ is exposure to the change or injury or loss. In the sense used in this provision, the risk must also be real and not simply conceptual.”

[96] Similarly in *Mac v Bank of Queensland Limited; Locke; Thompson; Hester; Van Den Heuvel; Newman* [2015] FWC 774 (*Mac*), Hatcher VP, referring to *Re SB* found at paragraph [94]:

“[94] It is clear that it is not necessary for an applicant to demonstrate that he or she has suffered an actual detriment to health or safety – that is, actual illness or injury – in order to demonstrate the necessary risk. However, the existence of such an illness or injury may be relied upon as a manifestation of the necessary risk, provided of course that the requisite causal link to the unreasonable behaviour at work has been established.”

Consideration

[97] Having regard to the statutory prerequisites that are common ground between the parties and which have already been referred to in this decision, it is now necessary for me to determine, pursuant to s.789FF(2) whether Ms Roberts has been bullied at work by the named individuals as alleged. This requires my consideration of whether Mr and Mrs Bird have repeatedly behaved unreasonably towards Ms Roberts. There is no suggestion that Ms Roberts was being performance managed, although one witness, Mr Claxton, stated a concern with Ms Roberts’ work ethic which was not supported by the evidence of any other witness. There is also no real suggestion from View or Mr Bird that any of the behaviours complained of by Ms Roberts were considered to be reasonable management action.

[98] In *Mac* Hatcher VP at paragraph [99] provided a useful list of actions which may be considered as unreasonable:

“[99] ... During a longueur in the hearing, I attempted to draw up a list of the features at least some of which one might expect to find in a course of repeated unreasonable behaviour that constituted bullying at work. My list included the following: intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination...”

[99] I now turn to the specific instances of unreasonable behaviour alleged by Ms Roberts in her application and consider the findings made in relation to the statutory framework.

Allegation 1

[100] Allegation 1 was made out with Mrs Bird found to have belittled and humiliated Ms Roberts.

Allegation 2

[101] Allegation 2 was not made out.

Allegation 3

[102] Allegation 3 was not made out.

Allegation 4

[103] Allegation 4 is made out with Mrs Bird found to have deliberately delayed performing administration work for Ms Roberts' property listings and this behaviour was unreasonable.

Allegation 5

[104] Allegation 5 is made out with Mrs Bird found to have behaved unreasonably toward Mrs Roberts when replying to Mrs Roberts' verbal offer to answer the telephone.

Allegation 6

[105] Allegation 6 was not made out.

Allegation 7

[106] Allegation 7 was not made out.

Allegation 8

[107] Allegation 8 was not made out.

Allegation 9

[108] Allegation 9 was not made.

Allegation 10

[109] Allegation 10 was made out with Mrs Bird found to have acted unreasonably to damage the reputation of Ms Roberts with one of her clients.

Allegation 11

[110] Allegation 11 was not substantiated.

Allegation 12

[111] Allegation 12 was made out with Mrs Bird not acknowledging Ms Roberts in the morning when she entered the office and treating her differently to other employees.

Allegation 13

[112] Allegation 13 was made out with Mrs Bird found to ignore Ms Roberts in the office, speak to Ms Roberts in an abrupt way, and generally treat Ms Roberts differently to other employees.

Allegation 13A

[113] Allegation 13A was made out with Mr Bird found to have made inappropriate comments about a possible same-sex relationship to Ms Roberts that caused embarrassment to Ms Roberts, and were unreasonable.

Allegation 14

[114] Allegation 14 was not made out.

Allegation 15

[115] Allegation 15 was made out with Mrs Bird found to have a belittling attitude toward Ms Roberts and to have made unreasonable comments to Ms Roberts.

Allegation 16

[116] Allegation 16 was not made out.

Allegation 17

[117] Allegation 17 is made out with Mrs Bird found to have behaved in a belittling and aggressive way towards Ms Roberts.

[118] It is clear Ms Roberts was subjected to, on more than one occasion, namely eight occasions, behaviour from Mrs Bird that was unreasonable (see paragraphs [18] to [90]). This behaviour by Mrs Bird was repeated behaviour over an extended period of time.

[119] Having regard for the evidence lead by Ms Roberts in relation to her diagnosis of depression and anxiety, medication and treatment by a psychologist, I am satisfied that the behaviour has posed a risk to health and safety.

[120] Mr Bird was found to have behaved unreasonably toward Ms Roberts on only one occasion and therefore the behaviour was not repeated, pursuant to s.789FD. Accordingly, I have concluded that as Mr Bird did not repeat his unreasonable behaviour his behaviour must fall outside the definition of bullying at work.

Conclusion

[121] I am satisfied the behaviour carried out by Mrs Bird fulfils the prerequisite criteria of s.789FD of the Act and therefore constitutes bullying at work of Ms Roberts.

[122] I am now required to determine, pursuant to s.789FF(3) whether there is a risk of the bullying at work of Ms Roberts continuing. Mr Durkin contended that as an anti-bullying policy and manual had now been established by VIEW Tasmania and VIEW Launceston, there was no risk of bullying behaviour occurring at work in future. I respectfully disagree with this submission. The evidence at hearing was that Mr Bird, Mrs Bird and View did not consider that any of the behaviour complained of constituted bullying. A lack of understanding as to the nature of the behaviour displayed at work has the proclivity to see the behaviour repeated in future by Mrs Bird. I conclude that there is a risk of Ms Roberts continuing to be bullied at work.

[123] I am therefore able, pursuant to s.789FF to make an order to stop the bullying at work of Ms Roberts. Due to the nature of the small workplace and a lack of submissions by the respondent as to the form any order should take, I will list the matter for a conference between the parties to discuss the order.

DEPUTY PRESIDENT

Appearances:

Ms R. Roberts, the Applicant in person

Mr D. Durkin, for VIEW and persons named

Hearing details:

2015:

Launceston,

27-29 July

- 1 Exhibit A1 – Submissions and statement of Rachael Roberts
- 2 Exhibit A3 – Witness statement of Glen Arthur Boyd dated 27 May 2015
- 3 Exhibit R7 – Witness statement of Lisa Bird dated 17 March 2015
- 4 Exhibit R6 – Witness statement of James Gerald Bird dated 17 March 2015
- 5 Exhibit R8 – Witness statement of Andrew Allan William Claxton dated 16 March 2015
- 6 Transcript – PN1906
- 7 Transcript – PN460
- 8 Transcript – PN598
- 9 Exhibit A2 – Form F72 – Application to stop bullying
- 10 Ibid
- 11 Exhibit R7 – paragraph 41
- 12 Transcript – PN529
- 13 Transcript – PN530
- 14 Transcript – PN4548
- 15 Exhibit A2
- 16 Note: Evidence showed that incident occurred prior to employment of Carol Hill and Gary Jessup which occurred at end of October 2013
- 17 Exhibit A3
- 18 Transcript – PN145, 146, 155
- 19 Exhibit A1 – Attachment “D”, map of office
- 20 Transcript – PN174, PN184
- 21 Transcript – PN3537

- 22 Transcript – PN2004
- 23 Transcript – PN191
- 24 Transcript – PN201
- 25 Transcript – PN2008, PN2009
- 26 Transcript – PN2541
- 27 Transcript – PN221-PN222
- 28 Transcript – PN229
- 29 Exhibit A2
- 30 Transcript – PN2011-PN2013
- 31 Exhibit A1 – Attachment “E”
- 32 Transcript – PN251-PN252
- 33 Note: Evidence was Carol Hill and Gary Jessup commenced employment at end of October 2013
- 34 Transcript – PN260-PN262 and Exhibit A2
- 35 Transcript – PN3123, PN3127
- 36 Transcript – PN1994
- 37 Transcript – PN274, PN275
- 38 Transcript – PN2015, PN2016
- 39 Exhibit R6 – paragraph 52 and Transcript – PN2024, 2025, 2586-2592
- 40 *Amie Mac v Bank of Queensland Limited & Ors* [2015] FWC 774 at paragraph [99]
- 41 Transcript – PN2629
- 42 Transcript – PN2619 and Exhibit R5
- 43 Transcript – PN3180
- 44 Transcript – PN334
- 45 Transcript – PN3185
- 46 Transcript – PN342
- 47 Transcript – PN344

- 48 Transcript – PN2698
- 49 Exhibit A1 – Attachment “J”
- 50 Exhibit R6 – paragraph 59
- 51 Exhibit R3
- 52 Transcript – PN3222, PN3223
- 53 Transcript – PN3268
- 54 Transcript – PN1956
- 55 Transcript – PN1957
- 56 Exhibit A1 – attachment “M”
- 57 Ibid
- 58 Exhibit A2
- 59 Transcript – PN448
- 60 Exhibit A2
- 61 Exhibit A1 – Attachment “M” page 3
- 62 Transcript – PN3024
- 63 Transcript – PN3288
- 64 Exhibit A1 – Attachment “M” page 3
- 65 Exhibit R1 – Workers Compensation Medical Certificate
- 66 Section 7(1) – Note: Definition excludes a member of the Defence Force

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