

Maree Liddell
(SO2022/276)

FAIR WORK COMMISSION DECISION

COMMISSIONER MCKINNON

SYDNEY, 22 DECEMBER 2022

Application for an order to stop bullying

[1] On 9 June 2022, an application was made for orders to stop bullying at work under s.789FC of the *Fair Work Act 2009* (the FW Act) by Maree Liddell, who goes by the name of “the living woman ‘Maree Dorothy Anne’, of the Family ‘Liddell’” (the Applicant). The Applicant was employed as a primary school teacher to teach music at Bodalla Public School by the Department of Education (NSW) (the Respondent). The alleged bullying at work occurred while the Applicant was at work in the Teaching Service of New South Wales (Teaching Service).¹

[2] Section 789FD of the FW Act deals with when a worker is bullied at work. A worker is bullied at work if, while they are at work in a constitutionally-covered business, one or more individuals repeatedly behave unreasonably toward them and the behaviour creates a risk to health and safety.

[3] The question is whether the Respondent is a “constitutionally covered business” for the purposes of s.789D(3) of the FW Act.

Consideration

[4] Section 789FD of the FW Act provides as follows:

“When is a worker bullied at work or sexually harassed at work?”

- (1) A worker is *bullied at work* if:
 - (a) while the worker is at work in a constitutionally-covered business:
 - (i) an individual; or
 - (ii) a group of individuals;

repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and

- (b) that behaviour creates a risk to health and safety.
- (2) To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.
- ...
- (3) If a person conducts a business or undertaking (within the meaning of the *Work Health and Safety Act 2011*) and either:
- (a) the person is:
 - (i) a constitutional corporation; or
 - (ii) the Commonwealth; or
 - (iii) a Commonwealth authority; or
 - (iv) a body corporate incorporated in a Territory; or
 - (b) the business or undertaking is conducted principally in a Territory or Commonwealth place;

then the business or undertaking is a *constitutionally-covered business*.”

[5] The Respondent is a “Department of the Public Service” listed in Part 1 of Schedule 1 to the *Government Sector Employment Act 2013* (NSW) and the Applicant’s employment is governed by the *Teaching Service Act 1980* (NSW) (“the Teaching Act”). Under s.44 of the Teaching Act, a person other than the Secretary of a Department who is employed in the Teaching Service is taken to be employed by the Government of New South Wales in the service of the Crown.

[6] The business or undertaking of the Respondent is conducted principally in New South Wales, which is neither a Territory nor a Commonwealth place for the purposes of s.789FD(3)(b). The Respondent is not a body corporate incorporated in a Territory (per s.789FD(3)(a)(iv)) and it is not a Commonwealth authority (per s.789FD(3)(a)(iii)). The New South Wales Government is not the Commonwealth (including for the purposes of s.789FD(3)(a)(ii)).

[7] The Respondent is also not a constitutional corporation. The holding of an Australian Business Number (ABN) does not alter the legal character of the Respondent and make it so. A State government entity is entitled to register for an ABN. This does not mean that it is either a corporation or a constitutional corporation – even if the entity operates a business. Not all businesses are constitutional corporations. The decision of the High Court of Australia in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v Queensland Rail & Anor* [2015] HCA 11 is not authority for the proposition that the simple holding of an ABN by an entity that provides services for

money is sufficient to establish an entity's status as a trading corporation. Nor does s.35 of the FW Act state that "If you have an ABN and you employ people, you are a Company."

[8] The term "constitutional corporation" is defined in s. 12 of the FW Act as a corporation to which paragraph 51(xx) of the *Commonwealth of Australia Constitution Act* (the Constitution) applies". Paragraph 51(xx) of the Constitution relevantly confers power on the Australian Parliament "to make laws... with respect to... foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth".

[9] This can be distinguished from the Commonwealth's power to make laws with respect to matters such as trade and commerce with other countries, and "among the States". A State is not a corporation – it is a colony that is for the time being part of the Commonwealth under the Australian Constitution (s.6 of the Constitution). New South Wales is part of the Commonwealth although it is not "the Commonwealth".

Conclusion

[10] The application relates to the work of the Applicant within the Teaching Service, while she was taken to be employed by the Government of New South Wales in the service of the Crown.

[11] The Government of New South Wales is not a constitutionally-covered business for the purposes of s.789FD(3) of the FW Act, and nor is the Respondent. Part 6-4B of the FW Act does not apply to the Applicant in relation to her employment within the Teaching Service. The Commission does not have jurisdiction to deal with the application.

[12] It is not separately necessary to determine the various contentions of the Applicant as to her different status at law to that of an ordinary citizen of Australia, or the notion that her employment in the Teaching Service somehow came to be through an individual contract with another employee of the Respondent who was also employed in the Teaching Service. If it were, I would reject the contentions. On the one hand, the Applicant seeks the benefit of Australian laws by way of orders to stop bullying at work, on the basis that the Respondent "needs to be held accountable for its workplace violence to me, as an "employee"." On the other, the Applicant submits that she is not subject to any laws to which she does not consent while simultaneously seeking the imposition of those laws upon others. Apart from the unsound premises upon which they rely, the positions are fundamentally inconsistent.

[13] The application is dismissed.



COMMISSIONER

Hearing details:

Determined on the papers.

¹ *Teaching Service Act 1980* (NSW).

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