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# EMPLOYMENT UPDATE

## BULLYING NOT SO FASHIONABLE

BY MURRAY PROCTER AND CARLY TRAEGER

### Sussan: Where tit goes with tat

A recent win for a bullied employee of the Sussan retail chain in the Supreme Court of Queensland shows that it has never been more important for employers to ensure frontline managers are adequately trained to respond appropriately to workplace bullying complaints.

Together with the introduction of the anti-bullying jurisdiction of the Fair Work Commission, existing statutory and contractual obligations about health and safety provide solid platforms for employees to obtain redress for bullying.

### The claim

In *Keegan v Sussan Corporation (Aust.) Pty Ltd*<sup>1</sup>, the employee, Ms Keegan, alleged that she had suffered a psychiatric injury as a result of bullying and harassment by her supervisor during 11 working days, after she had returned from maternity leave.

Ms Keegan had been employed by Sussan since 2004 and was the Assistant Store Manager at the

Cairns Central store in 2010 when she took maternity leave. During her absence a new store manager was recruited. When Ms Keegan returned to work, she claimed she was subjected to bullying behaviour by the Store Manager, including criticism of her handwriting, the cleanliness of the store, and was excluded from business management discussions.

Ms Keegan telephoned the State Manager on her fourth day back, and again on her eleventh day, to complain about the Store Manager's behaviour. The State Manager (who was not based in Cairns) told Ms Keegan to raise the issues with her store manager and work through them. Ms Keegan subsequently went on leave and did not return to work.

Ms Keegan claimed AU\$1.2 million damages for personal injury and consequential loss allegedly arising as a result of the negligence and breach of contract of Sussan.

Sussan denied liability, arguing that Ms Keegan had an extraordinary and unforeseeable psychiatric response to essentially unremarkable behaviour by a supervisor towards her.

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<sup>1</sup> [2014] QSC 64 (7 April 2014)

## Risk of injury reasonably foreseeable

The Court found that Sussan had breached its duty of care to Ms Keegan by failing to comply with its own bullying and harassment policy, which stated that any bullying complaints would be treated seriously and investigated, and that confidentiality would be respected. Contrary to the policy, when Ms Keegan, in a state of distress, telephoned the State Manager to complain, she was told (amongst other things) to *"put some lippy on"* and *"go home to your bub"*. The State Manager then phoned the Store Manager, told her of the complaint and advised her to be mindful of how she spoke to Ms Keegan.

The Store Manager then confronted Ms Keegan and very soon thereafter continued her pedantic and sometimes aggressive behaviour toward Ms Keegan.

The Court found that a reasonable person in Sussan's position would have taken precautions against the risk of injury by properly addressing the bullying complaint in compliance with its own policies. It was reasonably foreseeable that Ms Keegan's level of distress may worsen (as a result of Sussan's failure to properly address her complaint) to the extent that she suffered a psychiatric injury.

An additional factor relevant to the breach was that the Store Manager's previous employer had stated, during Sussan's reference checking of the Store Manager during recruitment, that she would not employ her again because of her poor people and management skills. The Court found this adverse reference should have put the State Manager on notice that she was employing a person with limited management skills who would need training and support. Instead, the Store Manager only received general training in relation to Sussan's policies and procedures and no training in personnel management.

## Breach of duty of care caused injury

The Court went on to find that Sussan's breach of duty had caused Ms Keegan's psychiatric injury, which included a major depressive disorder and a chronic adjustment disorder with anxiety.

Importantly, it was both the bullying conduct of the Store Manager and the lack of support from the State Manager which were found to be the cause. This was despite the fact that a psychiatric analysis

concluded Ms Keegan had some pre-existing personality traits which may have made her more vulnerable to suffering psychiatric injury, and matters outside work had exacerbated her condition.

## Award of damages

The Court awarded Ms Keegan a total of AU\$237,770. The Court found that Ms Keegan would likely obtain full-time work within three years, but was unable to return to work at present.

## Lessons for employers

The important lessons for employers to take away from this decision are that:

- Bullying behaviour only needs to occur over a short period of time to be capable of resulting in successful legal action.
- It doesn't matter if an employee is more sensitive or vulnerable to bullying, an employer may still be liable if they fail to protect the employee from risk e.g. ignore the warning signs.
- It is essential for frontline managers to be trained in workplace policies and procedures, including the importance of compliance with those policies (and the risks of non-compliance).
- Workplace policies must be complied with - if the policy states that any complaints will be taken seriously and investigated, then this needs to occur, no matter how trivial a complaint may appear at first instance.
- If an employer becomes aware (through recruitment or otherwise) that an employee has negative traits or requires training or support in a particular area, the employer can be held to account if the employee's behaviour goes unaddressed and creates an issue later in their employment.

## MORE INFORMATION

For more information, please contact:



**Murray Procter**  
Partner  
T +61 7 3246 4062  
murray.procter@dlapiper.com



**Carly Traeger**  
Solicitor  
T +61 7 3246 4046  
carly.traeger@dlapiper.com

Contact your nearest DLA Piper office:

### BRISBANE

Level 28, Waterfront Place  
1 Eagle Street  
Brisbane QLD 4000  
T +61 7 3246 4000  
F +61 7 3229 4077  
brisbane@dlapiper.com

### CANBERRA

Level 3, 55 Wentworth Avenue  
Kingston ACT 2604  
T +61 2 6201 8787  
F +61 2 6230 7848  
canberra@dlapiper.com

### MELBOURNE

Level 21, 140 William Street  
Melbourne VIC 3000  
T +61 3 9274 5000  
F +61 3 9274 5111  
melbourne@dlapiper.com

### PERTH

Level 31, Central Park  
152–158 St Georges Terrace  
Perth WA 6000  
T +61 8 6467 6000  
F +61 8 6467 6001  
perth@dlapiper.com

### SYDNEY

Level 38, 201 Elizabeth Street  
Sydney NSW 2000  
T +61 2 9286 8000  
F +61 2 9286 4144  
sydney@dlapiper.com

[www.dlapiper.com](http://www.dlapiper.com)

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