



GREG REIFFEL CONSULTING

HUMAN RESOURCES & INDUSTRIAL RELATIONS

Employee Relations News

Edition 56

9 January 2017

Introduction

Hi, and welcome to my first newsletter for 2017. For the past 30 years, I have been assisting employers across most industries to put in place “best practice” HR, IR and QA solutions.

This “Special Edition” focuses on the employment-related annual reports 2015/2016 by agency. This often “hidden” cost to employment is testimony to why businesses and organisations should have in place robust HR practices.

The things that are constant over the years have been:

- Prosecution continue to rise (and agencies are gaining much publicity as a result).
- “No-win, No-fee” employee representatives have maintained a steady income stream.

The following are highlights of the annual reports published by:

- [Fair Work Ombudsman](#)
- [Fair Work Commission](#)
- [Victorian Equal Opportunity and Human Rights Commission](#)
- [WorkSafe Victoria](#)

Fair Work Ombudsman

- Launched the Anonymous Report tool: An on-line Anonymous Report tool allowing for anyone to “dob-in” employers.
- Roping-in supply chains: Encouraging businesses to take responsibility for their supply chains and networks. This is known as “accessorial liability” and enables the FWO to prosecute a party other than the employer who played a role in the exploitation of workers. In 2015–16 this included accountants and human resource managers. 92% of prosecutions roped in an accessory.

FWO v Step Ahead Security Service Pty Ltd & Anor, we can now also recoup back-payments from accessories, making them directly accountable for underpayments in which they were involved.

- Step Ahead underpaid its 72 employees a total of \$22,779.
- The director was ordered to pay penalties in the amount of \$51,400
- Step Ahead to pay penalties in the amount of \$257,000 for contravening the Fair Work Act.

An injunction was also imposed which restrained Mr Jennings from underpaying security industry workers in the future.

- As the following table illustrates, whilst court proceedings remain constant, the FWO's effectiveness in "winning" is substantially prevailing.

	2015	2014
Civil litigations commenced	50	50
Penalty decisions	41	33
Penalties awarded	\$2 918 643	\$2 380 638
Underpayments recovered	\$1 411 910	\$863 847

- In addition to financial penalties, the FWO sought court orders for back-pay or compensation, injunctions, and other requirements to rectify breaches. These included:
 - Freezing orders to prevent businesses and accessories from transferring assets. The assets of one company were frozen to the value of almost \$84 600 in alleged underpayments during the year. The accessory named in these proceedings also had assets frozen to the value of \$12 000.
 - An attachment of earnings order requiring a company director (accessory) to personally pay court-imposed penalties, with \$500 a fortnight deducted from their earnings.
 - Injunctive orders to prevent a person from contravening the Fair Work Act in the future.
 - Corrective action orders, requiring parties to complete training and future audits to address non-compliance.
 - Orders requiring parties to notify the FWO if they planned to sell their business or acquire new businesses.

Note: Where directors have been involved in serious breaches of workplace laws, we also refer the matter to the Australian Securities and Investments Commission (ASIC) for their consideration as to the application of corporation law.

Simple remedy

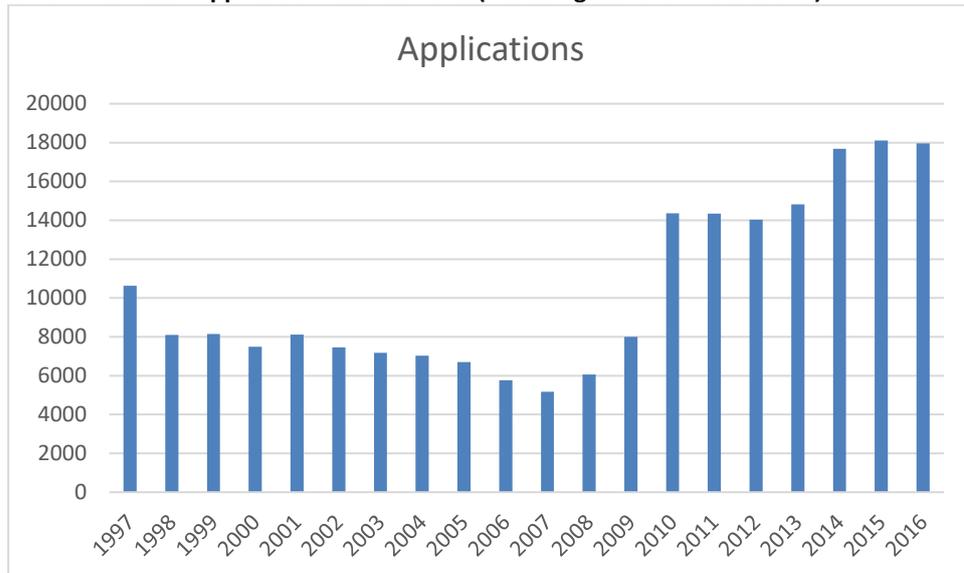
Invest in my services to conduct a workplace audit.

Fair Work Commission

Unfair dismissal

- Of the 17,964 unfair dismissal claims lodged, 90% were "settled" by the employer paying the former employee "go away money".
- Of the 265 applications that went to arbitration, the FWC decided:
 - 130 in favour of the employer.
 - 135 in favour of the employee.
 - 18 (only) granted reinstatement and lost wages. The rest were awarded monetary amounts.

Unfair Dismissal Application 1997 to 2016 (including General Protections)



Simple remedy

Ring me for advice **BEFORE** dismissing an employee.

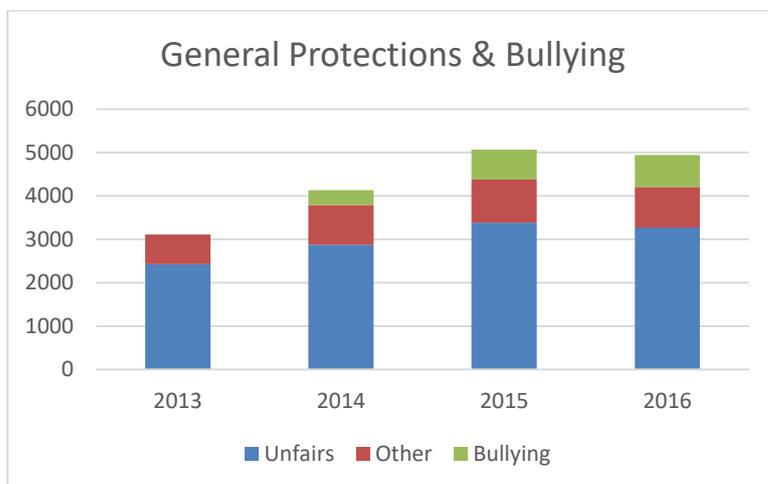
General Protections

This is an interesting part of the Fair Work Act 2009, which places the onus on the employer to prove that they did nothing wrong. This is called “reverse onus of proof”. “Employee representatives are finding this a popular revenue stream from unsuspecting employers.

Bullying, is defined as

“An individual or a group of individuals repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member, and that behaviour creates a risk to health and safety”.

Remember the following statistics only apply to “General Protections” and “Stop Bullying Orders”



Stop-Bullying applications outcomes:

Not much in this for the “No-win, No-fee” brigade. So, numbers, whilst rising steadily to 705 applications:

- 462 applications were withdrawn,
- 191 were resolved “during the course of proceeding”, and
- 52 were finalised by decision.

Appeals

If you are unhappy with a decision of the FWC, good luck with appealing the decision, as is almost 4 out of 5 cases are refused permission to appeal.

Therefore, if you fight a case in the FWC, go in with all guns blazing at the conciliation stage, and increase this pressure at the arbitration stage.

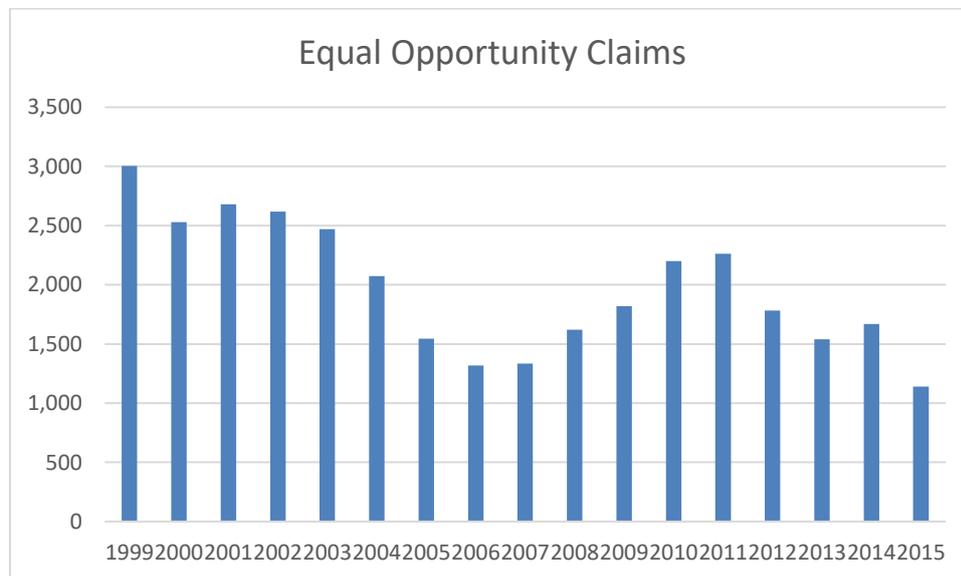
Permission to appeal statistics

Year	Total	Not granted	Granted
2015-16	137	107	26
2014-15	70	52	18

Victorian Equal Opportunity and Human Rights Commission

There were 1,139 “employment related” claims for 2015/2016.

Claims 1999 to 2015



Employees alleged that employers broke the law because they discriminated against the employee (or potential employee) on account of their:

Attribute	2013/14	2014/15	2015/16
Age	77	90	83
Authorising and assisting			
Breastfeeding	6	1	5
Carer status	85	99	62
Disability	340	355	258

Discriminatory info. request			
Employment activity	210	188	114
Gender identity	1	9	1
Industrial activity	27	20	17
Lawful sexual activity	14	3	1
Marital status	29	21	10
Parental status	83	93	66
Personal association	19	23	9
Physical features	90	100	62
Political belief or activity	9	2	3
Pregnancy	43	35	33
Race	175	174	100
Racial vilification			
Religious belief or activity	21	39	22
Religious vilification			
Sex	110	184	130
Sexual harassment	185	170	138
Sexual orientation	16	61	25
Victimisation			
Total	1540	1667	1139

WorkSafe Victoria

- WorkSafe has again been working hard to keep us all safe through enforcement, stating:

“WorkSafe’s role in enforcing OHS and return to work legislation is important in driving safety improvements across the state”.

- In 2015/16, WorkSafe completed 110 prosecutions.
- Imposed fines of \$5,241,000.
- Visited 46,259 workplaces.
- Entered into four enforceable undertakings.

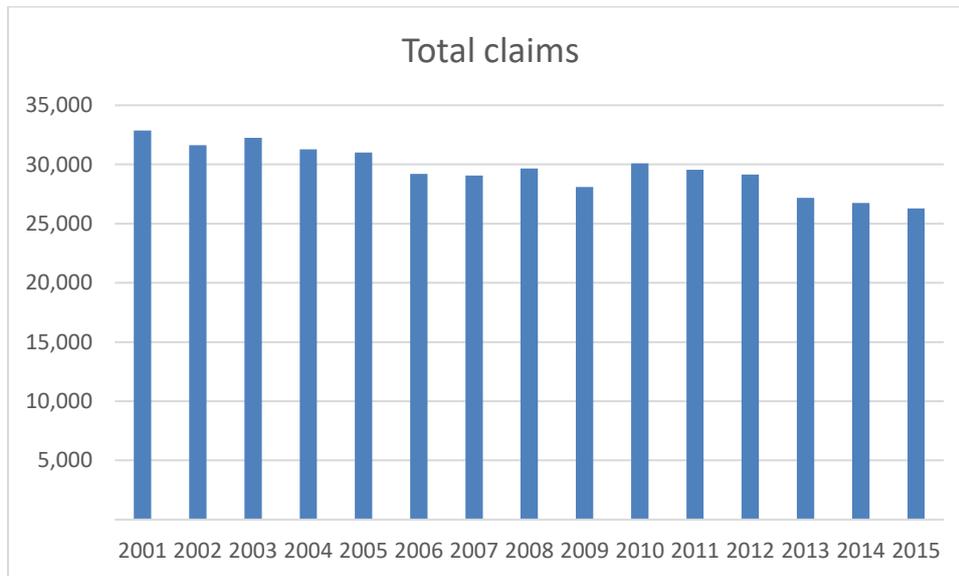
Compliance measures	2013/14	2014/15	2015/16
Annual workplace visits	41,566	40,711	46,259
Prosecution success rate	88%	93%	94%
Investigations proceeding to prosecution charges within 12 months	75%	83%	91%
Completed investigations proceeding to legal review outcome	67%	66%	71%
Prosecutions commenced	107	114	119

- Unfortunately, 31 workers lost their lives (11 in agriculture and eight in construction) – up from 20 in the previous year.

Claims

For some reason the WorkSafe Annual report does not break-down the total claims by injury/illness.

There were 26,286 claims last year.



Focus

WorkSafe is taking an active role in addressing:

- Workplace violence, especially the increasing risks faced by front line workers across the state. It is working in partnership across Government, with healthcare providers and with Victorian workplaces. The focus is to address the underlying issues, while educating employers and workers on how to recognise the risks in order to prevent injury and harm.
- Promotion of positive mental health, reduce workplace risks through targeted prevention activities and provide support and assistance for those affected by stress disorders. Highlights include:
 - An updated stress website and guidance material.
 - Increased visits in the education sector.
 - The Mental Wellbeing Collaboration Resource Centre is an innovative partnership with Superfriend and VicHealth that raises awareness of the role that leaders play in promoting positive mental health in the workplace.
 - The bullying prevention alliance is a partnership with the Bully Zero Australia Foundation and Brodie's Law Foundation that delivered a series of engaging and emotive education and information sessions to younger workers.
- Asbestos:
 - The dangers associated with asbestos are well established and will remain a high priority. We continue to work with others to minimise the risk of exposure to asbestos in the community. This year, WorkSafe has worked on increasing awareness of safe work practices when removing or disturbing materials containing asbestos and on increasing awareness of in situ asbestos contained in older buildings.

Until next time...

Greg Reiffel
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