



Workplace bullying horror stories

What not to do if your business wants
to keep its reputation intact

Bullying is a word that takes many people back to their days in the school yard. Unfortunately, for some bullying can be an issue in their adult life too.

Not only do workplaces function best when people feel safe and supported, but it is vital that workers be protected from bullying for their own well-being. This is why the anti-bullying legislation in Australia has a workplace health and safety focus – bullied individuals can suffer from trauma, depression, ill health and even suicide.

As you're about to read, some Australian employers have paid the price for letting bullying take place within their businesses. The financial cost can be high, not to mention the impact on reputation and loss of moral amongst employees. Serious cases of bullying can lead to criminal prosecution.

Specific occupations have been identified as high-risk for bullying and violence. These include clerical and administrative workers, information and organisation professionals, prison officers, police, welfare support workers, social workers, labourers, and nurses.

Industries which have high reported rates of bullying include health care, professional services, public order, local government, residential care and hospitals. It is disturbing and saddening to see that bullying is not only a feature of male-dominated 'tough' industries but is also prevalent in many of our caring professions.

Apprenticeship Support Australia helps apprentices by operating as an independent body offering mentoring and mediation services to counter and prevent bullying in the workplace.

I hope this eBook provides you with some workable solutions for avoiding or eliminating bullying within your business.

James Moran

General Manager,
Apprenticeship Support Australia

Employer pays \$1.36m to sexually harassed labourer

If you're an employer burying your head in the sand – "We don't have bullies in our company", or "it's not my problem", then you need to realise that you can be held legally responsible for an employee or employees who bully others and the potential payout can be huge.

In a recent case, a female labourer who was frequently abused, bullied and sexually harassed, including a rape threat, successfully sued her employer, a Victorian construction company, for negligence for failing to provide her with a safe working environment.

Throughout her employment the labourer endured taunts of whether she had "silicone boobs" and vile sexually explicit remarks. On one occasion she was grabbed by the hips and had a sex act simulated on her. She also received threatening comments such as "I will take you into the container and f*** you". Her

foreman had called her "useless", a "spastic" and a "bimbo" and workers exposed her to pornography. A co-worker remarked in her presence that "anything that bleeds once a month should be shot."

She was reluctant to complain to her foreman as he was also responsible for some of the offensive remarks.

On her last day of work she was taunted with a threat "I am going to follow you home, rip your clothes off and rape you". She reported this to the person she believed to be responsible for HR who invited her to ". . . come to my place . . . we will have a drink and talk about it". Following this exchange she received an anonymous call from a male calling her a "c***". She did not work after this.

As a result of her long-term ordeal she suffered psychiatric injuries including chronic post-traumatic stress disorder (PTSD).

The employer was found to be negligent in allowing this toxic working environment and the woman was awarded \$1.36 million.¹



Horrific and expensive, isn't it?

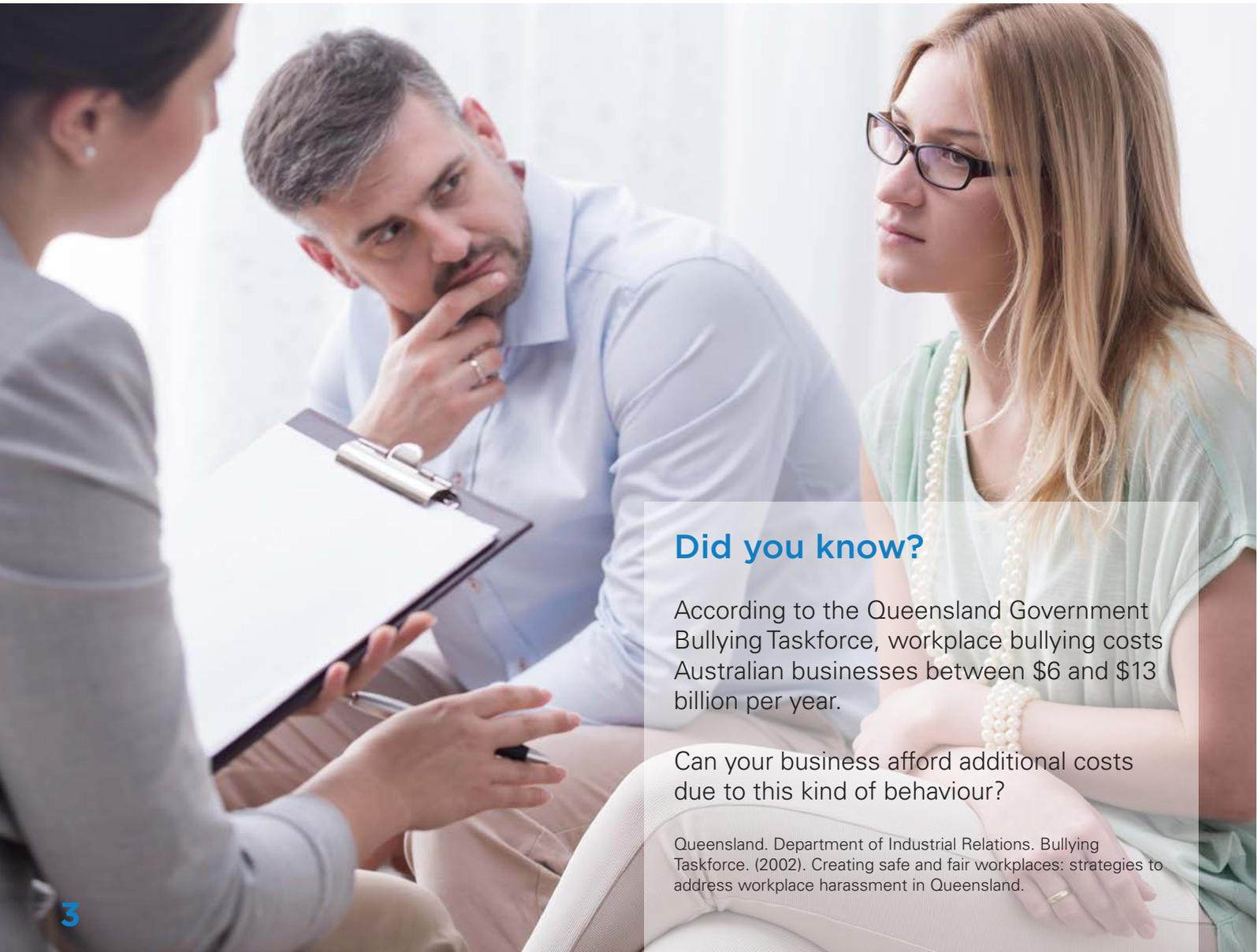
The victim in this incident endured such vile treatment that she was left with permanent psychological injuries. And her employer earned a significant financial penalty – for allowing an environment in which the behaviour could occur.

Workplace bullying is toxic

It can result in serious repercussions for everyone - the bullied employee, the bully, those witnessing it and the employer. It is also

prevalent (half of all Australian employees will experience workplace bullying during their careers, [new research finds](#)) and it's illegal.

The negative effects on people and productivity are obvious: high staff turnover and associated recruitment and training costs; low morale and motivation, and increased absenteeism; lost productivity; disruption to work when complex complaints are being investigated; costs associated with counselling, mediation and support; costly workers' compensation claims or legal action; and damage to the reputation of the business.



Did you know?

According to the Queensland Government Bullying Taskforce, workplace bullying costs Australian businesses between \$6 and \$13 billion per year.

Can your business afford additional costs due to this kind of behaviour?

Queensland. Department of Industrial Relations. Bullying Taskforce. (2002). Creating safe and fair workplaces: strategies to address workplace harassment in Queensland.

What does the law say?

Bullying behavior is covered by a range of legislation, from equal opportunity and anti-discrimination laws, to work health and safety laws and the federal Fair Work Act which gives the Fair Work Commission the ability to issue 'stop bullying' orders.

The definition of bullying used in the Fair Work Act is that it occurs when an individual or a group of individuals **repeatedly** behaves unreasonably towards the worker, and that behaviour creates a risk to health and safety. The risk to health and safety can be either psychological or physical or both.

What does bullying look like?

Bullying is:

- Offensive language, yelling, screaming, verbal abuse, rudeness
- Excluding or isolating employees from team activities
- Ridicule, insults, belittling opinions, patronising titles or nicknames
- Deliberately changing work rosters to inconvenience a particular employee
- Cyber-bullying (eg; by email or via social media)
- Giving employees deliberately impossible assignments
- Withholding information necessary to perform work

It can occur between a worker and a manager; workers and supervisors, or co-workers.

Bullying is not:

- Genuine and reasonable disciplinary procedures
- Genuine and reasonable performance management — constructively delivered feedback or counselling
- Directing and controlling how work is done

Repeated behaviour:

Repeated behaviour includes persistent behaviour and includes a range of behaviours over time. This means one-off serious occurrences of aggravated behaviour, such as violence, will not be dealt with as bullying but will be dealt with through other laws such as the criminal law.



More workplace bullying horror stories

These case studies show just how devastating the impact of bullying can be on a business.

Apprentice sexually harassed by male boss

A male boss in Victoria sexually harassed a male apprentice by repeatedly asking him to shower with him, grabbing his genitals and simulating sex acts from behind him.²

The engine reconditioner apprentice said that on an almost weekly basis his boss would ask him to take a shower with him or to come in and wash him. On these occasions, his boss would say: 'You know you want to Chris, don't make me drag you in there'.

The boss would also make 'pig noises' to suggest the apprentice and he were having sex.

On one occasion, in the workshop, in front of other employees, his boss succeeded in pulling the top half of the worker's overalls down, pinning his arms and tangling them in the strapping. The boss then jumped on the apprentice's back and simulated sex acts, while inserting his hand into the pocket of the overalls, grabbing the worker's genitals.

The boss denied the harassment took place, saying the apprentice was motivated to make a damages claim because of jealousy and greed.

Desire to bully?

However, the Victorian Civil and Administrative Tribunal found the apprentice was a credible witness and awarded him \$35,000 in damages.

It found the director's motivation seemed to come from either a desire to bully the apprentice in front of his co-workers or from a perception that the sexualised statements and physical contact was an 'appropriate form of horseplay in the workplace'.

Overlapping conduct

This case shows the substantial overlap between conduct that considered to be sexual harassment (as found by VCAT in this case) and the legal definition of bullying. It provides an example of where conduct by a manager towards an employee is clearly not "reasonable management action", in this case going well beyond and falling into the category of sexual harassment.

Sina Mostafavi, Senior Associate, Australian Business Lawyers & Advisors, Accredited Specialist in Employment and Industrial Law.

Extreme bullying leads to \$150,000 damages

A sickening list of workplace abuse over more than four years led the NSW Supreme Court to find News Limited and a security company, Group 4 Securitas, liable for a security manager's behaviour.

The case underlines how critical it is to ensure employees won't feel victimised if they report unacceptable behaviour by their supervisors.

Background

Group 4 Securitas was contracted to News Limited to provide security at its premises. Its employee (the plaintiff) worked under the direction of the News Limited security and fire manager.

Over the course of more than four years, the manager 'so grossly misbehaved towards him that he suffered serious psychiatric injury, namely post-traumatic stress disorder and major depression'.

The incidents complained of were so indefensible that News Limited, as soon as it learned of his conduct, terminated the manager's employment.

The abuse started with verbal attacks, calling the Fijian-born worker a 'coconut head, monkey face, piker, and black man' plus various four-letter words and derogatory comments. It deteriorated into breaches of privacy when the worker used the toilet. And it culminated in sexual assault, whereby the manager forced the worker to watch him fondle himself while taking a shower, and even squeezed the worker's genitals on one occasion.

These, and other incidents such as forcing him to work extremely long hours, occurred in an atmosphere where the manager was constantly threatening the worker with physical violence, the loss of his job, and even at times with the loss of his life.

Eventually, the torrent of abuse tipped the plaintiff over the edge of mental health. He slid into depression, started drinking heavily, and suffered suicidal thoughts. His marriage broke up, he was hospitalised and he became completely incapacitated for any form of paid work. The Court said he would be 'an emotional cripple of the rest of his life'!



Why didn't the plaintiff complain?

The worker gave evidence that he did complain to a general manager at Group 4, but was given the impression that the contract between News Limited and Group 4 was valuable, the customer was 'an extremely demanding client' and that the plaintiff should 'hang in there'. The Supreme Court accepted evidence that Group 4 was not aware of the detail of the specific incidents, including racial slurs or harmfully demeaning conduct.

Nice policy, poor communication

Nevertheless, the judge felt the Group 4 manager was well aware that the News Limited manager was a bully and should have realised that he was frequently verbally intimidating to staff. Group 4 had a policy prohibiting personal vilification and systems designed to deal with it if it occurred, but the Court said it was not made sufficiently clear to all employees that they had a duty not only in relation to acts done to them but also acts done to others.

The judge said that employers generally should investigate even the occasional complaint. If they fail to do so then employees will think it's pointless to complain and therefore continue to suffer. And the behaviour may well get worse.

The judge found the News Limited's employee's conduct "so grave and its consequences so serious" that he awarded the worker \$150,000.

[Naidu v Group 4 Securitas Pty Ltd & Anor \[2005\] NSWSC 618.](#)

Communication needed!

This case shows how the mere existence of policies, however well drafted, is not sufficient and the importance of regular communication and training of these policies to everyone.

It's possible if Group 4 had undertaken such communication/training, the manager would have reported the offensive conduct earlier and the risk of it continuing would have been avoided (or, at least, mitigated)

— *Sina Mostafavi*



Brodie's Law

Brodie's Law was introduced into Victoria's anti-bullying legislation in 2011 after the tragic suicide of a young woman as a result of workplace bullying. Brodie Panlock, 19, was subjected to relentless bullying from co-workers at a Victorian café where she worked. The ongoing intimidation, humiliation, harassment and bullying by her workmates proved too much for her, finally breaking her spirit and ending in her taking her life.

Four men were convicted and fined between \$10,000 and \$45,000 each, under the Victorian *Occupational Health and Safety Act 2004*. The owner of the café was fined \$220,000.

None of those responsible for bullying Brodie were able to be charged with a serious criminal offence under the Crimes Act. Instead, each offender was convicted and fined under the Occupational Health and Safety Act.

As a result of Brodie's Law, serious bullying is now a criminal offence in Victoria, allowing serious workplace and online bullies to be jailed for up to 10 years. It applies to all forms of serious bullying, including physical bullying, psychological bullying, verbal bullying, stalking and cyberbullying.

Australia-wide

To date, only Victoria has implemented such legislation. However, work health and safety legislation in a number of Australian states/territories provides for penalties of up to five years' imprisonment for the most serious breaches (ie, those involving recklessness as to the risk of death, or serious injury or illness without reasonable excuse).

While we of course hope that no scenario similar to that which led to Brodie's Law will occur again, it is possible that a person in future could be subject to imprisonment for a particularly serious breach of work health and safety legislation arising out of workplace bullying. — *Sina Mostafavi*



8 ways not to be a bully

Use these guidelines to inform yourself and your workers of expected behaviour in the workplace.³

1. Behave in a reasonable manner

The Fair Work Act 2009 (s789FD(1)) defines workplace bullying as where an individual or group of individuals repeatedly behaves unreasonably towards a worker or a group of workers at work, and the behaviour creates a risk to health and safety.

So, a good rule to go by is: If you would not like someone behaving towards you in a similar manner, then the behaviour is likely to be seen as unreasonable.

2. Don't be aggressive or intimidating

This type of behaviour includes actual assault and threats of physical harm.

3. Don't make belittling or humiliating comments

Don't make comments that make fun of the individual (or more generally of their race, gender, etc).

Belittling or humiliating comments can also include nasty nicknames.

4. Don't victimise workers

This not only includes blaming workers for things they have not done, but also includes requiring them to work unreasonably: for example, unreasonably long hours, making them do the work of colleagues, and inconsistent work and discipline requirements compared to colleagues.

It can also include unreasonable refusal of a worker's entitlements, for example, annual leave or parental leave.

5. Don't spread malicious rumours

Most people like to know about the latest work gossip; but, again, this is an area where asking yourself 'how would I feel if this happened to me' is a good strategy. A classic example of a malicious rumour occurs when someone is promoted unexpectedly and rumours of how he/she "got the job" are spread.

6. Don't make practical jokes or participate in 'initiations' of new workers

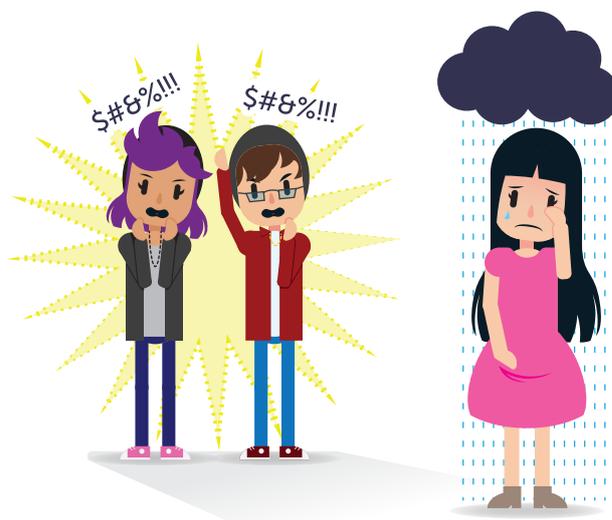
Initiation rites and practical jokes often involve behaviour that seems extreme to those outside the "group". For example, in an infamous case a 16-year-old new apprentice was wrapped in cling wrap during a half-hour "initiation ceremony" by a group of older colleagues that also included his being whirled around on a trolley while covered in sawdust and glue, and having sawdust forced into his mouth as well as a fire hose squirted into his mouth.

7. Don't exclude workers from work-related events

Productive workplaces are inclusive ones and excluding certain individuals from work-related events (eg. social club events, or even meetings) will not create the productive environment you desire. Certain types of workplaces may make this sort of bullying more intolerable than others; for example, the police force and other work environments in which individuals spend long periods working closely with others, often in stressful conditions.

8. Don't have unreasonable work expectations

The most obvious examples of unreasonable work expectations include requiring unreasonable hours and amounts of work and refusing to provide assistance as well as creating performance management issues about small work errors.



Code of Conduct

As the above examples show, bullying can take hold in a number of different ways and in different circumstances. One way to assist workers to interact respectfully is to introduce a Code of Conduct in your workplace (if you don't have one already) and require all your workers to read and adhere to it.

Bullying can be stopped and it is part of your job as an employer to make sure it doesn't happen in your business.

Sources and further information

HR Advance provides a comprehensive library of more than 200 fully customisable HR, IR and safety documents including contracts, policies, forms, communications and checklists, including:

- Code of Conduct
- Workplace Bullying Policy
- Workplace Bullying Assessment Checklist

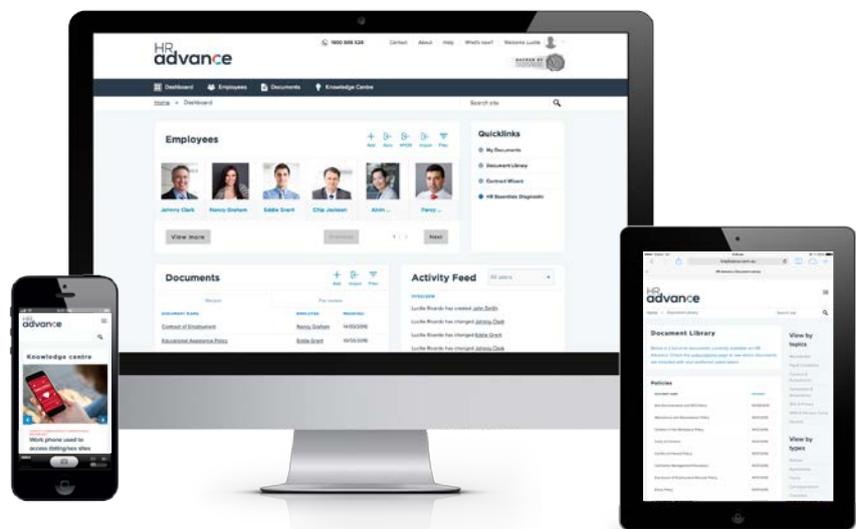
For more information about how HR Advance can help you please call us on **1800 505 529** or email us at customerservice@hradvance.com.au

All documents come with extensive notes on their use and application.

[Guide For Preventing And Responding To Workplace Bullying](#)

[Fair Work Commission: Anti-bullying page](#)

[Anti-bullying Benchbook](#)



End notes

1. *M v Winslow Constructors (Vic) Pty Ltd [2015] VSC 728 (17 December 2015)*
2. *Thomas v Alexiou [2008] VCAT 2264 (31 October 2008)*
3. *Based on the Fair Work Commission's examples of bullying provided in its Anti-Bullying Benchbook*

* Advice outlined in this eBook is of a general nature. For help with your specific case we recommend undertaking further consultation to address your individual concerns.



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