

feature cover story

By Denise Cullen

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# Much more than the battered bottom line

What is it to be: psychological warfare or collaborative solutions? With attitudes toward bullying hardening, employers need to start taking constructive steps to stamp out the practice—fast.

**T**he decision of *Naidu v Group 4 Securitas*, in which a security guard sustained severe psychiatric injuries on the job, is significant not just for the record \$2 million in damages awarded but also for the \$150,000 in exemplary damages included in the 2005 judgement.

Exemplary damages, as the name suggests, are intended to make an example of the defendant and, in this case, send a strong message to other employers regarding their responsibility to protect workers against workplace bullying.

Although the payout awarded to Devandar Naidu was unprecedented, people working in this arena note that both the volume of claims and the dollar value attached to successful ones are creeping ever higher.

David Davies, a partner with Sparke Helmore Lawyers, reports that a decade ago only one in every 10 of his files involved workplace bullying and harassment.

“These days, it’s closer to half,” Davies says. “I don’t think this means there is more bullying and harassment but rather that people are more willing to litigate.

“We’re also seeing significantly more damages than we used to, with many judgments around the half-a-million-dollar mark.

“And then there’s the reputational damage that comes with claims of workplace bullying that can easily be made by aggrieved employees in the social media space. It’s incalculable.”

## Attitudinal shifts

However, there is much more at stake than finances. The legacy left by Brodie Panlock, a 19-year-old waitress who committed suicide after being verbally and physically assaulted by colleagues, was the passing in Victoria last year of a change to the Crimes Act that introduces 10-year prison terms for bullying.

The move signalled an important attitudinal shift towards workplace bullies. Bullying was no longer just a headache to be handled by human resources—at least in Victoria.

Prompted by Productivity Commission findings that workplace bullying costs Australia between \$6 billion and \$36 billion a year, a parliamentary inquiry is now under way to consider a range of issues surrounding the practice, including whether the Victorian approach should be introduced nationally.

Safe Work Australia is also revising the model work health and safety code of practice on workplace bullying ▶



to incorporate feedback received through the three-month public comment period last year. A revised draft code will be completed in the second half of this year and released again for public comment, before being finalised. It will then form part of the model WHS laws introduced to ensure employees receive similar protections no matter where they work.

A spokesperson for Safe Work Australia says the model WHS code on workplace bullying released in 2011 provided a risk management approach for persons conducting a business or undertaking, stating they should view bullies as hazards every bit as dangerous as faulty machinery or live electrical wires.

“The primary focus ... is to ensure that workplaces are free of physical and psychological hazards,” the spokesperson notes. “The model WHS act makes it clear that ‘health’ means physical and psychological health, and

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the duty of care extends to the prevention of workplace bullying. It provides a range of offences including one that is targeted at conduct of the most serious kind involving recklessness and provides for five years’ imprisonment.”

Maximum fines will range from \$3 million for a body corporate through to \$300,000 for a worker. Also set for release later this year is Safe Work Australia’s *Australian Work Health and Safety Strategy 2012–2022*, listing the prevention of mental disorders, including those caused by exposure to workplace bullying, as a national priority for the next decade.

#### **Helping or hindering?**

But some, like psychologist Evelyn Field, are concerned that tough new laws will merely amplify the existing adversarial approach that pits the bullied against their tormentors and brings on battles from which no winners emerge.

Rather, Field favours restorative practices that focus on finding collaborative solutions, repairing relationships and providing victims with social and emotional resilience tools.

Associate Professor Maryam Omari, of the School of Management at Edith Cowan University in Western Australia, voices similar reservations.

“When workplace bullying incidents emerge, it becomes a situation of ‘psychological warfare,’ with all the connotations of reciprocity that the phrase implies,” Omari says. “What often happens is that conflict escalates,

till at the end each side accuses the other of inappropriate conduct and behaviour ... Legislation is the end of the line. We need to stop before it gets to that point.”

#### **Lack of agreement**

But if a lawsuit represents the end of the line then an allegation is the starting point and not everyone agrees on what, exactly, constitutes bullying. It's easy enough to photograph frayed carpets or blocked fire escapes, but far more challenging to capture the nuances of a particular conversation or incident.

Even the experts don't agree on the definition of bullying. Some specify that a power imbalance between the perpetrator and victim must exist; others argue that bullying occasionally (but not often) involves workers bullying their bosses.

Some require the obnoxious behaviours—which might include name calling, screaming, shouting, spreading rumours, imposing impossible deadlines, withholding access to information or excessively monitoring work—to be repeated.

“But something can happen just once, with huge repercussions for the individual concerned,” Omari says. “And even if something happens only once, people tend to

relive the experience and so it does become repeated.”

Even the 'reasonable person' test is problematic in these choppy waters.

“Workplace bullying can be in the eye of the beholder and people have very different thresholds,” Omari says. “Much of my research is currently exploring cultural differences, too—for example, in some Middle Eastern and Mediterranean cultures people talking in loud voices and over the top of other speakers simply expresses the passion they bring to the conversational topic, while in other cultures, this would be seen as hostile. And as much as barking orders at people is what happens in the military, it would be far from acceptable in a white-collar workplace.”

#### **A fine line**

The insidious nature of some bullying tactics also makes it hard to identify and expose them, says workplace bullying consultant and author Sheila Freeman.

“Bullies can use subtle, underhand strategies to undermine their victims,” she explains. “Either there are no witnesses to their behaviour or it is done under the guise of 'humour' or 'tough management'.”

Indeed, there is a “very fine line between robust performance management and workplace bullying”, notes ▶



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Omari, who adds that leaders can become goal-focused at the expense of human factors, particularly during challenging economic times.

“These people then become valuable to an organisation because they deliver and so they acquire an untouchable status and that sends all the wrong messages. You always hear, ‘Oh, that’s just their manner’, but that’s not good enough. Bullying is not OK just because they do it to everyone—it needs to be stopped.”

#### **Instructing and probing**

Irrespective of this backdrop of ambiguity and shifting regulatory regimes, there are several actions organisations can take to discharge their anti-bullying obligations.

According to Davies, the first is to instruct. “We need to ask, ‘What are we telling our people about what’s appropriate behaviour in our workplace?’ and to outline the sorts of behaviours that we won’t tolerate,” he says.

Delivering training around the instruction during induction or similar events is also crucial, as is supervision to ensure the rules of conduct are being implemented.

“The best policy documents in the world are of little use to anyone if they’re sitting in someone’s top drawer gathering dust, or languishing in the back of the intranet,” Davies says. “Employees need to know that the policy is alive, that managers are promoting and role-modelling it.”

Finally, he says, it is necessary to audit to investigate whether bullying and harassment problems are present in the workplace—through conducting engagement surveys, exit interviews, human resources discussions or

simply monitoring workers compensation and stress claims. “It’s about creating a culture where it’s OK to talk about bullying and harassment prevention,” Davies says.

#### **Risk management**

One recent investigation by WorksafeACT into claims of workplace bullying at the Canberra Institute of Technology serves as both a cautionary tale and as a “watershed moment in the treatment of this problem”, says Dr Carlo Caponecchia, a senior lecturer at the University of NSW.

On his *Mean Business* blog, Caponecchia says the inquiry was noteworthy because it was not concerned with the veracity or nature of bullying claims.

“Rather, it investigated whether the employer had fulfilled its duty to provide a safe workplace,” he writes. “These responsibilities include providing a safe workplace and system of work, monitoring safety and providing relevant information, training and supervision.”

Caponecchia further says the most instructive issue underscoring the whole report, which can be seen at [www.worksafe.act.gov.au](http://www.worksafe.act.gov.au), is the treatment of workplace bullying as a risk and how the acts or omissions were consistent (or not) with this approach.

“The potential for psychological hazards exists everywhere that humans work,” he writes.

“When there is a set of serious allegations, then they constitute a serious red flag. All employers can learn from this report about how they can make their policy and procedures more robust, and more likely to help them discharge their health and safety obligations.”