

# The Toxic Workplace

## “From Shop Floor To Boardroom”

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*‘making the workplace a better place to be’*

Toxic behaviour in the workplace comes in many forms, from overt forms of bullying and ridicule, to insidious behaviour that, over time, undermines individuals and work-groups over time. Employees are four times more likely to be bullied than sexually harassed and in 75% of cases will leave their jobs as a result.

Bad workplace behaviours and practices contribute to 30-50% of stress related illnesses at work costing this country up to \$60m/yr in workers compensation claims. One-in-four employees has been bullied at work and four-in-five employees have witnessed it.

In the workplace, a range of legislation, standards and codes of ethics guide our decision-making and our on-the-job conduct to ensure that all employees are treated fairly and with respect. Under OH&S provisions, employers and employees alike have a duty of care to prevent harm to others and to maintain the right to the ‘quiet enjoyment of work.’



### Note To Boss

#### One day, an upset employee wrote this note to her boss:

If it's really a rush job, run in and interrupt me every 10 minutes to inquire how it's going. That helps. Even better, hover behind me, and advise me at every keystroke.

If you give me more than one job to do, don't tell me which is priority. I am psychic.

Do your best to keep me working late. I adore this office and really have nowhere to go or anything to do. I have no life beyond work.

If you have special instructions for a job, don't write them down. In fact, save them until the job is almost done. No use confusing me with useful information.

### Examples of Toxic Work Behaviour Include:

- Unreasonable or constant reprimands, insults, sarcasm, criticism;
- Putting unnecessary blocks in the way of people doing their work;
- Withholding important information, then criticising their abilities;
- Unnecessary interference with a person's workspace, work materials, equipment or property;
- Unjustified and unnecessary comments about a person's work or capacity for work;
- Spreading gossip and rumours designed to undermine others;
- Phone calls, letters or message on electronic mail that are threatening, intimidating, abusive or unreasonably demanding;
- Over-monitoring and overloading of workers.
- Isolation or exclusion of a person or group from normal conversation, work assignments or work events;
- Shifting the blame or responsibility to others for own failures;
- Stealing the credit;
- Discounting or denying others accomplishments;
- Looking after own interests (payrises/perks) whilst denying opportunities, recognition or entitlements to others.
- Creation of a climate of fear by passive aggression.

### Toxic Work Environments Are Characterised By:

- High staff turnover.**
- Low staff morale.**
- Excessive gossip and discussion, usually about the toxic perpetrators.**
- High level of grievances and complaints, but not usually formal.**
- Restructuring of positions to eliminate unwanted employees or complainants.**
- Inconsistent application of policies and rules.**
- Poor performance reports on already overworked employees.**
- Denial that anything is wrong.**
- Victimisation of those who protest.**

### Bullying is linked to workplace changes

Recent Australian studies have shown that workplace bullying has been linked to:

- downsizing,
- increased hours of work,
- large workloads,
- lack of control over one's work, and
- inadequate staffing

### What About Workplace Violence?

Workplace violence is a situation in which a person at work becomes the target of threats, intimidation or physical violence. It can be a one-off, random, repeated, calculated or planned event.

Violence can be experienced from within the work environment (peers, bosses) or from outside (clients, customers).

### Workplace Violence is Linked To A Range of Factors

Violence at work has been linked to a range of factors including:

- employees feeling undervalued;
- workplace grievances being ineffectively dealt with;
- lack of mutual respect within workgroups;
- large workloads,
- increased work pressure;
- aggressive and authoritarian management styles;
- poor physical work environments and security measures; and
- inappropriate and inconsistent application of policies and procedures.

### Are you at risk?

Exposure to toxic workplace behaviour, including bullying and workplace violence is an occupational health and safety hazard. One in four people will be exposed to bullying at some time in their working lives and those who are most vulnerable include young people, women, members of minority groups and those in precarious or insecure employment. However, anybody can be exposed to it.

The form that bullying or violence takes is dependent on a number of risk factors. The following factors are important:

- Style of management or supervision;
- Consultation processes;
- Job design and work flow;
- Performance expectations;
- Composition of workforce;
- Level and nature of training;
- Workplace layout;
- Behaviour of clients and others;
- Reporting and emergency procedures;
- Time of day;
- Isolation and work location.



The specific impact of these factors vary according to type of industry, demographics, workplace culture etc.

### How big is the problem?

A 1998 Morgan Poll found that:

- 46% of employees had been verbally abused or physically assaulted by a co-worker or a manager.
- 7 % experienced physical abuse.
- 31% experienced verbal abuse from the manager.
- 35% experienced verbal abuse from a co-worker.
- 50% experienced verbal abuse from member of the public.
- 10% experienced physical abuse from member of the public.

### Where Is the Information?

Because workplace violence and bullying have not been regulated in Australia, data on incidents only appears if an injury has resulted in a compensation claim or a criminal conviction has been recorded.

### Workplace Violence is Hidden In Stress Compensation Claims

Bullying will not show up in workers compensation claims as 'workplace bullying'. It is therefore likely that bullying-related claims will be hidden within stress and other psychological injury claims.

Australia workers are exposed to verbal and physical abuse from sources from within their workplaces as well as the general public. In 1998, 9% of armed robberies were committed against organisations.

In 1998, in the health and community services sector, 15% of notices were issued by inspectors in relation to workplace violence – the majority of these were for "failure to undertake hazard identification, risk assessment and control".

### Dealing with Toxic Behaviour

In order to be able to work without such abusive workplace behaviour, people require conditions that our workplaces are able, but too often unwilling, to provide.

1. **Legitimacy or protection**– Often provided at the highest level of the organisation because the person who bullies is powerful, popular or good for business.
2. **Oppression of those effected** – People who are bullied can almost always be relied upon not to speak out. They experience shame and humiliation, and are often not believed.
3. **Complicit witnesses** – people who know things or have witnessed toxic behaviour, however do not report.

#### In order to stop toxic behaviour, people need to:

- Identify and name the behaviour for what it is.
- Confront such conduct so that those who suffer do not retreat into shame, self-doubt or self-blame.
- Skill and support employees and management to challenge the toxic behaviour.

## Toxic Workplace Behaviour is an OHS Issue

In general terms OHS provides a useful framework for the regulation of workplace health and safety. In line with an employer's duty of care to provide a safe and secure work environment (both physically and psychologically), OHS imposes these duties in the workplace.

It aims to ensure that those in authority exercise that authority in a manner that is not harmful to the health or safety of any person. Employers are responsible for health and safety of employees, while employees have an obligation not to harm any other others in the workplace.

In addition, employers have duties under other legislation such as criminal law, contract law and anti-discrimination law that give some effect to these responsibilities. Certain types of harassment, bullying and violence can be dealt with by these laws, however they are limited by their coverage and grounds.

For example a person who suffers harassment or discrimination in employment will have no redress under anti-discrimination law unless the harassment is racial or sexual or racial in nature, or any discrimination is clearly on grounds defined by legislation.

Meanwhile, these victims will have suffered a bad experience as if a criminal assault or unlawful discrimination had taken place. The health and safety of the victim has been put at risk from the treatment they experience in the workplace.

Whilst our EEO legislation provides some redress for racial and sexual harassment (and other forms of discrimination) in the workplace, legislation covering workplace bullying or workplace harassment is in its infancy in Australia.

In our laws, awards and agreements covering employment, there may be a reference that 'employees should treat colleagues and members of the public with due courtesy and respect'. In many cases, this is often as far as it goes.

In this respect, Tasmania is an excellent legislative case study for progressive legislation.

In addition to grounds for discrimination, the Tasmanian legislation prohibits sexual harassment, intimidatory harassment and harassment on the grounds of race, disability, sexuality or age.

Intimidatory harassment is defined as:

*"the thoughtless or intentional use of physical or organisational power to coerce a person to perform a particular action or to instil in the person a feeling of humiliation or intimidation.*

*Intimidatory harassment should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from a manager or supervisor on work performance or work related behaviour, delivered in a reasonable manner."*

The inadequacies of current legislation in dealing with bullying and workplace harassment highlight the need for change.

## Anti-discrimination law has the advantage of providing redress for those unlawfully discriminated or harassed in accordance with the effect on the victim, not the intent of the perpetrator.

The effect of the behaviour, not the intention of the harasser is the key consideration in determining whether unlawful harassment has occurred.

### OHS – Western Australia

In 1999, WorkSafe WA introduced a Code of Practice on Workplace Violence. Whilst the code covers the concept of bullying (and various forms of discrimination), it only applies where the behaviour is intended to cause psychological or physical harm.

The difficulty in this situation is proving the intent, as the following case demonstrates.



### Case Study – The "Creative" Chef

*After 12 months in the job, an apprentice chef left his job because he could not cope with the threatening and intimidating behaviour of the head chef. He suffered headaches and anxiety as a result of the pressure associated with the working environment. The chef swore at him, belittled him in front of others and prodded him with utensils to get him out of the way.*

*The chef didn't believe his behaviour was problematic because:*

- *He had trained many apprentices and no one had complained before;*
- *He demanded high standards to meet customer expectations and failure to respond to directives would cause a problem;*
- *Swearing and physical handling was just part of the work culture and most people got used to it; and*
- *Cooking is a highly creative process and the personal style of the chef cannot be changed to suit the sensibilities of a small minority.*

**On the next page are landmark case studies highlighting the industrial and OHS considerations in the toxic work environment.**



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## **Bullying by Supervisor – Award: \$270.791.98**

In Queensland a man was awarded \$270.791.98 because of behaviour he endured only because his supervisor found his mannerisms irritating.

Carlisle, the employee, sued the Council of the Shire of Kilkivan as well as his supervisor while he was employed on the council. Carlisle alleged that the council was in breach of the contract of employment, as well as its duty of care to him.

*Under OH&S legislation it is an offence for the employer to fail to ensure health and safety at work, save where it is not practicable to do so.*

### **Council's Vicarious Liability**

Carlisle worked for the council from 1988-1991 when he suffered a nervous breakdown. Dodds J found that Carlisle's nervous breakdown was a consequence of the supervisor's behaviour towards him, and that the council was vicariously liable for those actions. The council was aware of the supervisor's behaviour but had not taken adequate steps to put an end to it.



### **Humiliating Behaviour:**

Carlisle was subjected to a range of harassing and humiliating behaviour by the supervisor, including:

- Harassment for eating an orange;
- Harassment for complaining about being ill;
- Calling him stupid and saying he wasn't of much use;
- Singling him out to perform menial tasks, such as holding the stop/go baton when he was employed to drive the roller; and
- Instructing him to perform dangerous and unnecessary tasks, including operating the roller after Carlisle had complained it was too steep and beginning to slide.

### **Council & Supervisor Caused Nervous Breakdown**

The supervisor's behaviour was considered such that but for it, Carlisle's nervous breakdown was unlikely to have occurred. Furthermore, Carlisle's breakdown was *"compounded by apparent apathy on the part of the Council when he tried to have something done about it."*

As Dodds J correctly stated in his summing up of the case:

***"In today's Australian community it is not acceptable (if ever it was) for a person in authority over another in a workplace to harass, belittle or demean that other as a method of enforcing his authority or relieving his frustration."***

## **Highest Award for Bullying in Australia Bullying by Manager – Award \$572,512.87 Arnold –v- Midwest Radio**

Over a period of 3 months Marilyn Arnold was subjected by her manager to constant and repetitious use of abusive and aggressive language, threats of dismissal, obstructing her in the performance of work duties, falsely accusing her of criminal behaviour, asking her to find a hit man to kill someone and telling others she was going to take sexual harassment proceedings against another staff member. Arnold and another employee complained about Williams to a company director. No action was taken.

Arnold complained that as a result of Williams' behaviour towards her and other staff members that she suffered emotionally and required medical and psychiatric treatment.

Justice Cullinane found Midwest Radio vicariously liable for Williams' actions and therefore breached the duty owed to the plaintiff to provide a safe system of work and that his failure was a substantive cause of the development of the plaintiff's psychiatric condition.

### **Guillermo Funes –v- Qantas Flight Catering**

Mr. Funes was summarily dismissed in May 2000 as a result of *"abuse and harassment, physical assault, threatening and intimidating behaviour, and not adhering to safe work practices."*

Funes had a history of being overbearing, abrupt and directive, including haranguing and harassing his employees. This behaviour was long-standing in the group culture and new employees were subject to mischievous and harassment behaviour from Funes and others. Funes claimed that his past work experience had left him with the view that his behaviour was not unreasonable and he was achieving high productivity, which he believed the company wanted. Funes also claimed had not been the subject of any substantial concerns or complaints to or from management.

His dismissal occurred following an assault incident in which a subordinate attacked Funes because he believed he was being picked on. Funes reported the incident as an assault then changed his story to suggest he slipped. It was following this deceit that Funes was dismissed.

Whilst the company claimed that Funes had a history of troublesome work behaviour, they were unable to substantiate that they had brought such matters to his attention.

In reinstating Funes, Cmr. Laing found that whilst Funes *"was part architect of his own misfortune ... there had been a long history where the employer exercised little real control ..."* Upon reinstatement Funes was directed to counselling and the company required to implement proper standards and policies. Cmr. Lang concluded:

***"Conduct that in the past may not have met those standards ought no longer be tolerated and failure to adhere to reasonable standards should result in disciplinary action."***