

Time to outlaw toxic bullies

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Before seeing my client, I am handed a folder of documents by a colleague who shakes his head at its contents. The folder contains a detailed description of a group of employees who appear to have ritually enjoyed degrading one of their co-workers.

It makes disturbing reading.

When I walk into the room to meet "Jenny", I introduce myself. Jenny starts to sob loudly. I sit opposite her and look at her. The first thing she says to me is: "I don't want to live any more." It takes my breath away.

My professional, dispassionate, calm demeanour starts to crumble. I feel tearful. I have to steel myself. How to respond? All I can muster is: "No, no, no. You can't let those bastards do this. I am going to help you get through this."

With apologies to Neil Young, I have seen the bullying and the damage done.

And I have had a gutful on behalf of the procession of workplace bullying victims who attend my office seeking legal advice. Or, more accurately, break down in my office while apologising to me for doing so.

I have seen too many employees destroyed by sociopathic workplace bullies, their careers trashed along with their health. They work in all sectors and a surprising number are executives.

Much of my frustration is directed at the impotence of the law in dealing with bullying.

Workplace bullying involves degrading, belittling, humiliating and threatening behaviour; in some cases it spills over into violence.

It corrodes dignity, self-esteem, job satisfaction, motivation and ultimately mental and physical health. In particularly bad cases, employees who experience bullying are so damaged they are unable to return to the labour market. Years of workers' compensation or social security payments await them.

And then there are the employees such as Victorian hospitality worker Brodie Panlock, who was subjected to sustained workplace bullying until, in September 2006, she committed suicide.

The law in this area has one significant deficiency: workplace bullying is not illegal.

It might come as a surprise to many but the statute books are silent on the subject. As critics of the "nanny state" are wont to say, there is no shortage of legislation dealing with an enormous range of real or perceived social problems. But nothing explicitly dealing with workplace bullying.

Given its corrosive impact on mental and physical health, the absence of an explicit legislative prohibition on

bullying and harassment is anomalous.

The Productivity Commission reported in 2010 that the cost to the Australian economy of bullying and its close relative, harassment, ranged from \$6 billion to \$36 billion a year. These numbers are staggering.

I suspect the cost far exceeds the cost of unlawful industrial action each year, yet our statute books are teeming with laws dealing with it and allowing affected parties to sue.

The real cost of workplace bullying is much greater. The Productivity Commission does not measure the quality of life of victims or that of their colleagues, children, spouses and other family.

There are many workplace laws that enshrine important rights and protections, and provide employees with quick redress.

An employee who is misled about workplace bargaining can promptly go to court and seek penalties, damages and even an urgent injunction. An employee subjected to racial vilification or sexual harassment in the workplace has a case and the option of seeking wide-ranging remedies. An employee who makes a complaint to their employer about an issue in the workplace is protected from being sacked or otherwise prejudiced for doing so.

But for the thousands of others that endure bullying at work, there are no effective legal remedies that can be used to proactively stop the problem before it causes irreversible damage to health and career.

Many believe bullying is addressed by occupational health and safety laws. OHS laws impose obligations on employers to provide employees with a safe workplace. When bullying is sufficiently serious, a complaint can be made alleging the employer has failed in its obligations.

Once a complaint is made, an investigation may take place. If the outcome of that investigation identifies a breach of OHS laws, a prosecution of the employer and relevant employees may follow. This process can take several years.

Invariably, by the time this process has unfolded, the damage to a bullying victim has been done, often irreparably.

In the case of Brodie Panlock, court proceedings led to substantial fines against the workplace bullies who drove her to suicide. Those fines were levied about four years after her death.

Further, OHS laws are policed by government-funded inspectorates with limited resources.

The usual means of redress for employees suffering workplace bullying is workers' compensation. Again, even a successful workers' compensation claim does not compel the perpetrator to change their behaviour, nor does it compel their employer to address the behaviour.

Most importantly, such a claim can be made only after substantial psychiatric or physical damage is done.

In Victoria, criminal stalking laws have recently been changed to allow victims of extreme bullying behaviour another potential avenue. Although this initiative is perhaps symbolically important, I can safely predict it will have no impact on at least 95 per cent of genuine cases.

The existing legal options for victims of workplace bullying are too slow, impractical and reactive. Legislators should not pigeonhole the issue as a matter of personal injury or occupational health and safety.

Workplace bullying is above all, a matter of how we treat each other as human beings. It is illegitimate. It is toxic. It should be explicitly addressed in our statutes.

A national law that enables employees to seek urgent orders stopping the bullying conduct, and before the real damage is done, is well overdue.

In part, the policy failure to properly tackle workplace bullying can be explained by our inability to understand and properly value mental health.

Just as expenditure on mental health services has continued to lag well behind other health expenditure, our laws continue to lag behind areas that should value and protect mental health.

An investment in an educational campaign about workplace bullying, together with legal reform, would reap a huge dividend by saving millions in lost productivity, healthcare costs and social welfare payments.

Bullying behaviour thrives in a culture of darkness. It can persist for years in workplaces that are not exposed

to external scrutiny. The key to addressing bullying is for policymakers to legislate a practical means for employees to expose their work environment to external scrutiny in a court or tribunal.

Once the spotlight is activated on bullying behaviour, it tends to wither and die.

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