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Taking a systemic (risk management) approach to mediating bullying complaints: An evidence based model

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Should we be mediating bullying complaints in the first place?

- Last National Mediation Conference, in Adelaide 2010 and at the International Workplace Bullying Conference in Cardiff, a number of speakers said workplace bullying complaints should not be mediated
- Also, some of the well accepted and respected bullying literature recommends against mediating bullying complaints (Einarsen, Hoel, Zapf and Cooper (Eds), 2010)
- How many of you think that workplace bullying complaints should not be mediated?
- Why?

Criticisms of mediation

- Parties are not equals – Power imbalance
- Victims / targets are often disempowered
- Mediators focus on present and future relationships
- Confidential process – wrong doings outside public scrutiny
- May work to obscure patterns of bullying due to confidentiality
- Lack of follow-up and accountability

? A new framework for mediation

- These concerns can be taken into account to successfully mediate complaints of bullying

A Risk Management Framework

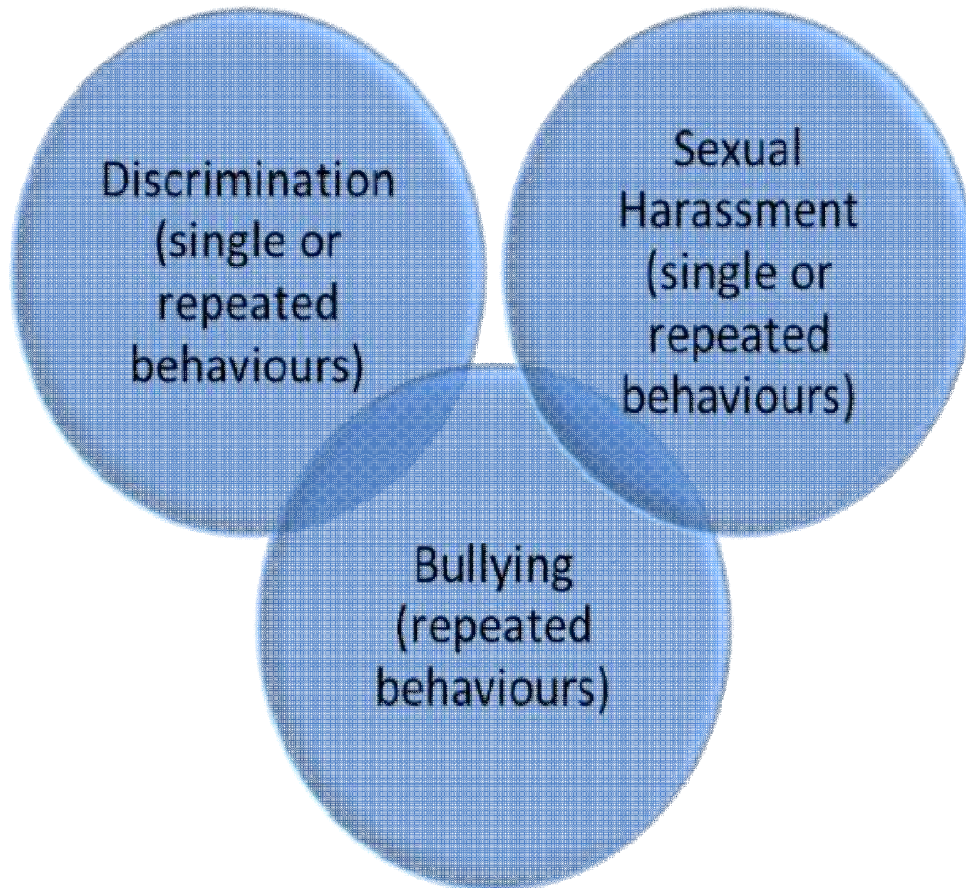
A risk management approach to mediating complaints of 'bullying'

- A working knowledge of what bullying is, and the research in the area of workplace bullying – (an evidence based knowledge of what are we dealing with)
- A working knowledge of the potential problems in mediating complaints that are framed as bullying
- A recognition of the need to adapt our mediation style and framework to accommodate possible concerns / different types of complaints and the complexities involved in 'workplace bullying'

To help answer...

What do we mean by bullying?

- Legal definition
- Research definition
 - Measurement issues
- Employee's interpretation
- Emotive interpretations – not evidence based i.e. the 'psychopath' approach
- Interaction between bullying behaviours, sexual harassment and discrimination



Bullying:

- Generally bullying is behaviour that is:
 - unwelcomed, humiliating and threatening
 - is repeated – not a one off
 - is perceived to be intentional
 - there is a power imbalance between the target and perpetrator
 - The longevity of the behaviour poses a potential risk to the targets health



"I've bought you a drink... Now can I sniff your bottom?"

What type of behaviour are we talking about?

- Predatory bullying?
- Dispute related bullying? (the bully / target distinction is often blurred, and reciprocity can characterise the bullying process especially in early stages)
- Are we even talking about ‘bullying’, or are we talking about other behaviours that although interrelated are not bullying? (but have been labelled that way by the complainant?)

What type of behaviour are we talking about?

- Upwards bullying?
- A complaint being used as a method of bullying?

Also need to take into account...

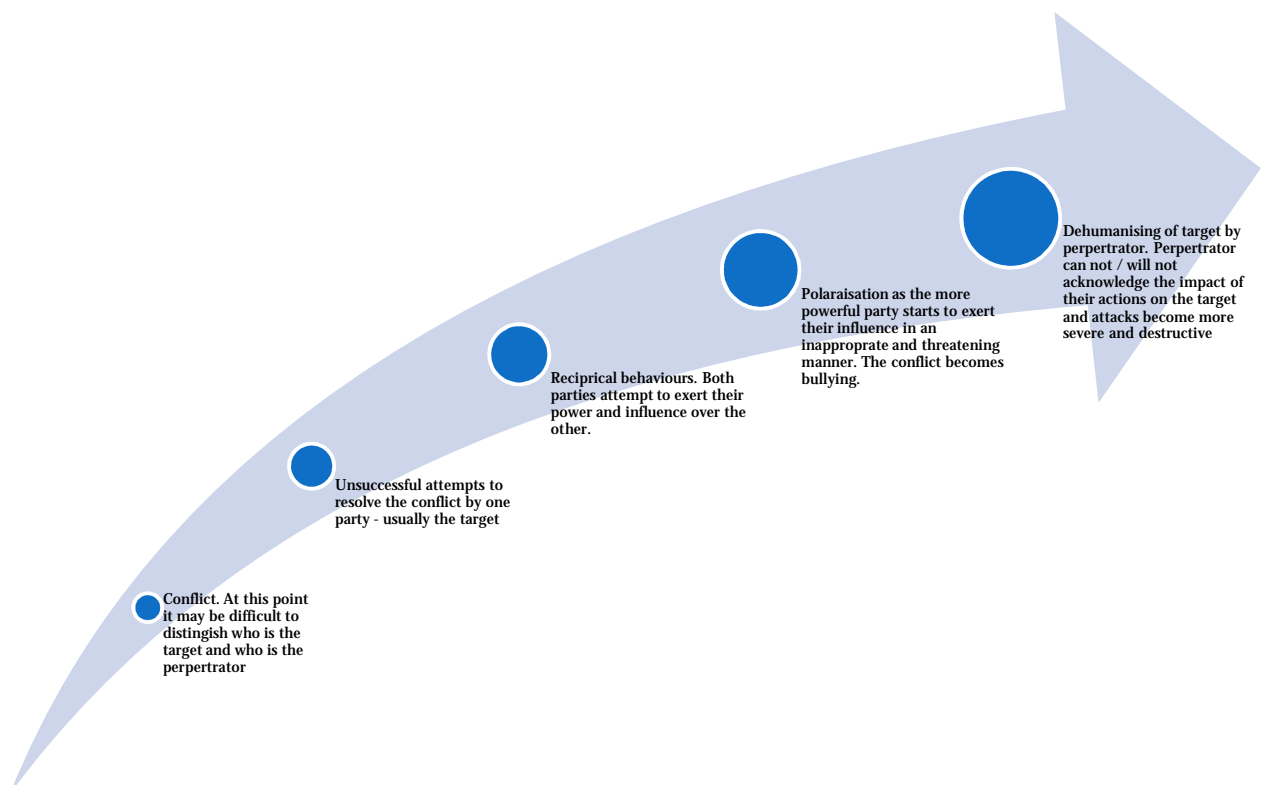
- **Consequences of being accused of workplace bullying: An exploratory study** (Jenkins, Winefeild & Sarris. International Journal of Workplace Health Management, 4,1 2011)
- **Bullying allegations from the accused bully's perspective** (Jenkins, Winefield & Sarris. British Journal of Management. In Press.)

Conflict escalation:

- There are a number of stages within the escalation of conflict where mediation may be appropriate, and mediation can take place in good faith. (Zapf and Gross, 2001)
- Bullying results from: “Long lasting, badly managed conflicts” (p. 499)
- Mediation effective in early stages

Often in a conflict...

- Both parties may be behaving badly.....
- The norm of reciprocity
- As the conflict escalates the more ‘powerful’ player utilises and takes advantage of that power...
- The first person to lodge a complaint is labelled the complainant (the victim / target) and the other party is the respondent (the alleged perpetrator / bully)



Bullying Theory

- Bullying is an escalating process
- It does not just happen ‘out of the blue’
- There are a number of background variables (risk factors) in the organisation that allow the behaviour to develop, (the conflict to escalate) and be maintained

Antecedents to workplace bullying

Organisational antecedents

Social climate

Individual characteristics
(target and perpetrator)

Systemic issues

<p style="text-align: center;">Organisational Antecedents</p> <ul style="list-style-type: none"> • Work organisation and job design • Management style • levels of stress in work environment • Changes • Role conflict • Role ambiguity • New technologies / restructuring • Lack of clear goals • Contradictory expectations, demands and values 	<p style="text-align: center;">Social Climate</p> <ul style="list-style-type: none"> • Sexualised climate • Climate where 'difference' can't fit in and vulnerable employees are marginalised • High levels of team conflict • Highly competitive environments • Laissez-faire management • Reciprocity • Norm violations
<p style="text-align: center;">Individual Characteristics of targets and perpetrators</p> <ul style="list-style-type: none"> • Hostile intentions • Unpredictable management style • Autocratic management style • Perceptions of unfairness • Protection of self esteem • Poor social competencies • Micro-political behaviours • Overachievement • High conflict / defensive personalities • Provocative behaviours 	<p style="text-align: center;">Systemic issues</p> <ul style="list-style-type: none"> • Lack of policy • Unclear values and codes of conduct • No training of managers as to their responsibilities • No training for employees as to their rights and responsibilities • No / poor complaints mechanism • Poor / no performance management systems

Identifying these antecedents is part of a risk management approach .

- Bullying is part of OHSW legislation
- A risk management approach is recommended to prevent workplace bullying
- This approach does not focus only on the participants, but takes into account potential risk factors that may have contributed to the conflict —————> bullying

In contrast...

- The traditional model of mediation does not take into account this approach
- Traditional mediation model only focuses on the relationship between the parties – in this case complainant (possible target) and respondent (possible perpetrator)
- Mediator is completely neutral and independent
- All that is said in mediation is confidential.

Issues that need to be taken into account in mediating 'bullying' complaints

Intake

What might you need to do differently in an intake for a mediation that has been labelled 'bullying'?

- Assessment of the stage of the conflict
- Assessment of safety for both parties
- 'Vol & Told' vs voluntary participation
- What do both want to achieve?
- How realistic are the expectations?
- Explaining the model to the parties

Issues that need to be taken into account in mediating 'bullying' complaints

Confidentiality

- Not absolute
- Agreement to mediate can address limitations to confidentiality
- HR may need to be informed of any of the risk factors in the organisation that have contributed to the conflict
- Additional information that is not confidential
- HR aware of settlement agreement and follows up

Issues that need to be taken into account in mediating 'bullying' complaints

Power

- Is not as obvious as the alleged perpetrator (Respondent is the more powerful of the two)
- Discussion with both parties as to options if the mediation is not successful (i.e. investigation, external government body)
- Use of external parties, supports, specialist advisors
- Education, information
- Encourage both parties to make realistic assessments

Issues that need to be taken into account in mediating 'bullying' complaints

Systemic issues / Risk factors

- If not addressed may contribute to further or ongoing conflict
- Parties can 'join' or collaborate to identify antecedents of the conflict and any systemic issues that may have contributed to the conflict
- HR to follow up on systemic issues

Issues that need to be taken into account in mediating 'bullying' complaints

Follow up

- Settlement agreement to agreed H.R consultant
- Regular follow up of both parties (? Mediator or / and HR)
- Adjunctive conflict coaching for both parties

To Conclude...

- Mediation is appropriate for a wide range of complaints labelled ‘bullying’.
- It may not be appropriate for serious bullying (however, may be appropriate after an investigation, disciplinary action to focus on future relationship / allow apology / expression of emotion / communication within a restorative justice framework)
- Needs to address the antecedents of the conflict from a risk management perspective
- Needs follow up.
- This extends the traditional role of the mediator

Full day Workshop

Mediating Workplace Bullying Complaints

- Being run through LEADR
- Will be advertised by LEADR
- Will be also advertised through the ‘aboto’ website:

www.aboto.com.au

Slides available at:
www.aboto.com.au/slides

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