

# Mediating Workplace Bullying Complaints: Ensuring sustainable outcomes

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## Workplace Bullying: To mediate or not to mediate...

- Who thinks that bullying complaints should be mediated / should not be mediated?
- Mediation and Alternate Dispute Resolution (ADR) processes are the most common interventions used to address bullying complaints (Salin, 2008, 2009; Saam, 2010)

## What is bullying?

Behaviour that is **directed towards an employee or group of employees** that is **repeated** and unwelcome, and that a **reasonable person** having regard to all the circumstances would consider to be offensive, intimidating, humiliating and threatening, and has the **potential to cause a risk to the targets** health and safety.

Taken from the section 55A (1) South Australian OHSW Act

## The main concepts underlying the term bullying:

Behaviour needs to occur **repeatedly and regularly** (e.g. weekly) and **over a period of time** (e.g. over six months). Bullying is an **escalating process** in the course of which the person confronted ends up in an **inferior position** and becomes the target to systematic negative acts.

A conflict can not be called bullying if it is an isolated event or if two parties of approximately equal strength are in conflict.

(Einarson, Hoel, Zapf and Cooper, 2003, p, 35.)

## However...

### — Workplace incivility:

“Low intensity deviant behaviour ... in violation of workplace norms for mutual respect”

“Characteristically rude, discourteous, displaying a lack of regard for others...”

“Insensitivity when implementing organisational procedures...”

(Andersson and Pearson. 1999, p. 457)

## Furthermore...

- The term bullying is often used to describe behaviours that, although interrelated, are not bullying (Caponecchia & Wyatt, 2009; Branch, 2008)
- Employees label a number of conflicts, unpopular management decisions, and negative interactions within the organisation as ‘bullying (Lewis, Sheehan and Davies, 2008; Liefoghe and Mackenzie-Davey, 2003, 2010)

## Behaviours labelled as bullying:

### Respondents study:

- Ongoing inappropriate behaviours (i.e. bullying)
- Ignoring
- Conflict over staff performance
- Inappropriate use of humour
- Counselling an employee
- One off inappropriate behaviours
- Sexualised humour / behaviours
- Failure to reclassify a group of workers
- Normal managerial practices labelled as bullying
  
- Upward bullying

### Complainants study:

- Changes in job content following return from leave
- One off conflicts with co-workers
- Decisions to counsel or discipline an employee
- Sexual harassment
- Racial conflict
- Acts of discrimination
- Ongoing inappropriate behaviours (i.e. bullying)
  
- Provocative complainants

Jenkins, Winefield and Sarris (2011)  
Consequences of being accused of workplace bullying: An exploratory study. *International Journal of Workplace Health Management*, 4, (1), 33-47.

- 30 managers accused of ‘bullying’
- 8 found guilty (26.7%)
- 20 found not guilty (66.7%)
- 2 unresolved / missing data
  
- All participants reported significant psychological distress, including, physical symptoms, severe depression and anxiety. Three reported suicidal ideation. One reported having a diagnosis of PTSD related to how he was treated following the allegation (allegation not substantiated)

## Types of bullying:

- Predatory bullying, which can include sexual harassment – may not be suitable for mediation without prior intervention and action. (however, often this type of bullying usually can only be sustained in organisations where there is lack of policy, proper management and a toxic culture).
- Conflict escalation – by far the most common type of complaint.

## 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)
- However, the bullying research highlights the importance of the work environment as contributing to escalation of conflicts that become bullying complaints.

## Mediation may be held following an investigation (and disciplinary action taken against the perpetrator)

- In order to address the underlying emotions
- Provide the target an avenue to be heard
- Provide a focus on future relationship
- Restore a relationship
  
- ‘Vol-in-told’ mediation (is this really mediation?)

## I wouldn't mediate if:

- The organisation had no policy, or complaint mechanism and did not want to address this as a priority
- Either party did not understand or could not participate in the process effectively
- The initial assessment indicated that that one party was being subjected to ongoing victimisation in some way by and a mediation may exacerbate this
- You can not effectively mediate a group complainant against one person. This needs to be investigated first, and systemic strategies undertaken to address the issues at a number of levels.

## Things to take into account:

- **Power:** One of the defining characteristics of bullying (Einarsen, Hoel, Zapf & Cooper, 2003)
- Although most mediators would like there to be a balanced power relationship between disputants, this is not the norm in any mediation (Moore, 2003)
- Role of the mediator is to help balance the power between the parties, so both can be heard

## Power:

- Pre mediation assessment and discussions
- Support persons – can be both positive and problematic
- Information about mediation and what it involves
- Make sure both parties are aware of their rights, including the right to stop mediation at any time
- Their right to have the matter investigated (The organisations policy and complaint procedures should allow this)

## Power cont...

- The mediator has the ability to stop the mediation at any time
- If the complaint involves discrimination or sexual harassment the complainant may be able to lodge a complaint with State anti-discrimination bodies or HREOC – Let both parties know this.

## Confidentiality in mediation:

- Is confidentiality absolute?
- *“Everything you say at mediation will remain confidential” ....?*
- There are limits to confidentiality
  - Safety
  - Identifying and reporting antecedents to the problem the organisation can address (need permission)
  - ? Risks contributing to psychological hazards in the workplace

## What do you think has contributed to the conflict?

- Both parties may be able to identify workplace risk factors that have contributed to the escalation of conflict between them.
- Lack of training
- Lack of policy / procedure
- Ambiguous job descriptions
- Significant changes in organisation
- Job insecurity
- Lack of management support / training/ mentoring
- No performance management processes in place

## These broader issues have been identified as OHSW risk factors for bullying:

- Reporting these identified risks to HR may prevent the ongoing escalation of conflict.
- May prevent further complaints being lodged
- Permission can be gained from both participants for the mediator to discuss these risk factors with HR
- Can help both parties to ‘join’ in presenting a common concern. This can help set a tone for resolution

## Conflict coaching:

- “process in which a coach and a client communicate one to one for the purposes of developing the clients conflict related understanding, interaction strategies and interaction skills including ways of making sense of the conflict, plans to actively manage the conflict and specific communication behaviours for the client to possibly enact” (Jones & Brinkers, 2008, p.5)
- Helpful post mediation and also prior to mediation if appropriate

## Conflict coaching cont...

- Conflict coaching may also be a recommendation the mediator makes to HR if one of the parties is displaying a poor ability to address conflict appropriately.
- Sometimes called ‘mediation for one’

## Follow up Follow up Follow up Follow up

- Can not be under estimated
- Effect of behaviour / allegation on both the complainant and respondent (Jenkins, Winefield and Sarris, 2011)
- Addressing the antecedents to the complaint identified during the mediation (risk factors )
- Monitoring the adherence to the settlement agreement
- Monitoring the behaviours of both parties

## This OHSW model of mediation:

- Uses an integrated and evidence based model to address OHSW risk factors that may have contributed to the allegation,
- This contrasts with a traditional facilitative mediation which focuses only on the relationship between the two parties.
- Because the work environment can contribute to bullying allegations, this environment needs to be taken into account if mediated outcomes are to be sustainable

Slides available at:  
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