



Today I will concentrate upon the law relating to workplace bullying, although I should make it clear that the law relating to bullying, insofar as it operates applies to all types of bullying with one significant exception. That exception is the passage of Commonwealth legislation last year, which for the first time in Australia gave a legal definition to bullying and provided a new remedy for persons bullied in the workplace. I will discuss this in some defail subsequently. I should also make it clear that I will be discussing legal issues, rather than offering advice on human relations or psychology of bullying that I am happy to leave to persons with professional qualifications in those areas. I will however outline some of my own experiences as a lawyer and judge and more recently as chair of the National Centre against Bullying (NCAB)

The National Centre against Bullying (NCAB)
http://www.ncab.org.au/

NCAB is a group of experts from all over Australia advising and informing on the issues of bullying and the creation of safe schools and communities.

NCAB works closely with school communities, governments and industry in addressing bullying issues.

Until recently its focus has been directed at schools and students, upon the basis that if progress can be made with them, it is probable that they will be less likely to be bullies in adult life.

However, more recently we have taken the view that there are many young people in the workplace who also need guidance and profection and many employers and managers who may benefit from expert assistance in handling bullying problems in th

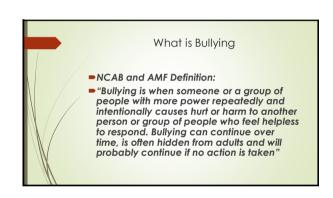
Alannah & Madeline Foundation (AMF) http://www.amf.org.au/ AMF was set up to prevent violence against children following the Port Arthur tragedy in 1996 at the instance of Walter Mikac, the father of Alannah and Madeline, two young schoolgirls who were murdered at Port Arthur. Its many activities include an active role in bullying prevention. To this end it set up NCAB in 2002, when I was asked to be its inaugural chair and I have performed that role ever since. Since 2010, AMF has also been engaged, with the help of NCAB, in settling up a revolutionary program to assist with bullying prevention called eSmart, following the successful precedents of Sunsmart and Quit where real change in community attitudes to the dangers of suntan and smoking has occurred. Although that program was developed in schools, we are in the process of extending it to the workplace and other areas and I will discuss this later in my presentation



A generational Problem Bullying is an intra and inter-generational phenomenon, with children who bully others at the age of 14 years likely to still engage in aggression at the age of 32 years and to have children who themselves engage in bullying and aggression. Thus bullying is not just a problem amongst children and youth but its reality extends into the home and the workplace

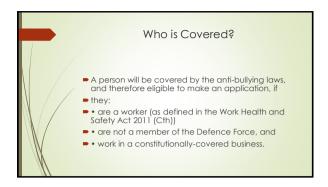


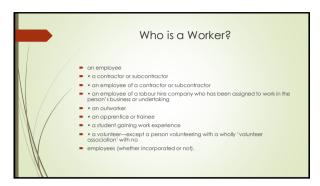
Bullying and the Law As I have mentioned, bullying is not a criminal offence nor is it a civil wrong in Australia This is important because it means that the criminal law anty provides a limited or no response to certain types of bullying and the civil law has to be adapted to do so and is similarly not always applicable. Many types of bullying can be criminal offences depending on the circumstances and may also attract civil liability for damages and the latter is particularly relevant to bullying in the workplace. Recent changes to workplace law have heightened the possibility of significant financial loss to employers arising from bullying



Statutory definition of Workplace Bullying Workplace bullying occurs when: an individual or group of individuals repeatedly behaves unreasonably towards a worker or group of workers at work, AND the behaviour creates a risk to health and safety. Reasonable management action conducted in a reasonable manner does not constitute workplace bullying.

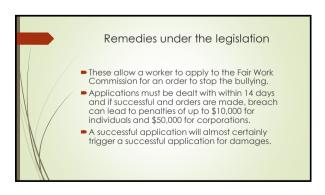


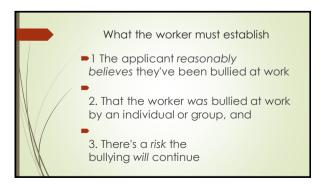






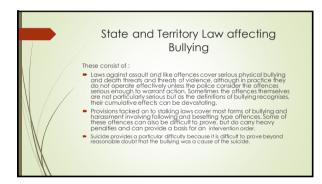










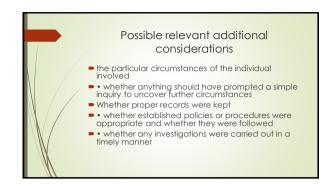








The extent of the employers duty of care to control workplace bullying The duty obviously extends to taking reasonable steps to prevent an employee being bulled at he workplace or away from It when engaged in work. The employer is vicariously liable for any negligence by a manager or supervisor in discharging this duty. More difficult issues acrise when butlying takes place away from work. However (I an employer or senior manager becomes or ought to have been aware of it occurring televenter at the hands of another worker or group of workers, then it is likely that the employer will also be liable (If it does not take reasonable steps to prevent the employee from suffering harm. There have even been decisions where employers have been found liable for sexual harassment by one employee towards another that takes place away from work.



What do you do as professionals to control bullying? Instruct your managers and supervisors as to their duty to control bullying. Develop appropriate anti-bullying policies and make sure that they are known to all employees. Make a written record of all complaints of bullying and properly investigate any such complaints. Provide appropriate support and protection to any staff who are subject to bullying. Ensure that staff have a confidential means to report bullying. Try to resolve the problem internally if possible





