

Ai Group Legal News

Experience

Matters



Ai Group Legal provides a professional set of legal services to complement the business and workplace services that have been provided by Ai Group to its members for many years.

The Criminalisation of Bullying Conduct

The Victorian Government has recently taken the step of criminalising certain bullying behaviour through the expansion of the definition of "stalking" in the Victorian Crimes Act. It is now a crime in Victoria for a person to engage in threatening, abusive or offensive conduct, amongst other things, with the intent of causing another person:

- physical or psychological harm (which includes suicidal thoughts);
- fear or apprehension as to their own safety or the safety of others; or
- to engage in self-harm.

The changes to the Victorian criminal law came about as a result of the well-publicised Brodie Panlock case in which three café employees were found to have breached Victoria's occupational health and safety laws by repeatedly bullying Ms Panlock, a waitress at the café, until she took her own life. The three employees were fined collectively \$85,000.

The café and its director were also fined \$220,000 and \$30,000 respectively for failing to have in place safe systems of work to prevent and address bullying behaviour which was putting the health and safety of others at risk.

The criminalisation of certain bullying conduct in Victoria only applies to the behaviour of individuals, not employers, however employees who are subject to

bullying behaviour from other employees (or anyone else in the workplace) can obtain an intervention order (an order preventing the alleged bully from being in physical proximity to the victim) which employers would need to manage in the workplace.

Employers in other states and territories should be aware, that in future, the laws



may be expanded nationally to capture the type of behaviour which has just been criminalised in Victoria.

In this issue:

- Brodie's law and how it will affect your business
- Online bullying
- The Fair Work Ombudsman's powers to inspect onsite
- Case update - an employer's liability

Bullying is best dealt with by taking steps to prevent it. Ai Group Legal can assist your business by helping develop policies and procedures, conduct investigations, and quickly respond to your queries on a needs be basis.

T: 1300 554 581

Our Services

- Legal advice
- Workplace investigations
- Conduct mediations and dispute settlement negotiations
- Employment contracts
- Representation in workplace matters in all jurisdictions





Online Bullying



The New Threat

The Fair Work Ombudsman's Powers

Fair Work Inspectors are government officials appointed by the Fair Work Ombudsman under the Fair Work Act 2009 which gives Inspectors certain powers to promote and monitor compliance with relevant Commonwealth workplace laws.

A Fair Work Investigator's role includes:

- Investigating workplace complaints and suspected contraventions of relevant laws and instruments; and
- Taking steps to enforce relevant laws and instruments.

Bullying or harassment may constitute unlawful behaviour under the Act or under occupational health and safety laws.

Ai Group Legal has experienced a rise in claims associated with social media being used as a tool by employees to bully, harass and discriminate against other employees.

Recent case law has forced Fair Work Australia to consider the impact of social media in this area. The tribunal issued a warning to employees (in Fitzgerald v Smith T/A Escape Hair Design Tribunal [2010] FWA 7358) that information posted on social networking sites can come back to haunt them and that Facebook comments may impact the employment relationship, even if comments are posted out of work hours.

As in the education arena, social media has broadened access to individuals, exposing employees to bullying behaviours off-site and after hours. This makes it difficult for the employer to monitor behaviour and conduct of its employees.

One of the ways in which a company can counter this is, by having in place a clear and accessible process for employees to report the abuse of these mediums.

Further, it needs to be widely known within the company that inappropriate use of social media will not be tolerated. If Fair Work Australia finds that there is a certain level of tolerance of such behaviour within a workplace, liability may, at least partially, rest with the company, rather than just with the perpetrator.

As such, disciplinary procedures must be followed where there is evidence that such behaviour has occurred and investigations into such conduct must be carried out swiftly to avoid the behaviour being 'condoned' by inaction.

Case Update

Recent case law in this area highlights the increased liability that employers have in this area of law.

On 7 June 2011 a Victorian engineer was given the all-clear by the County Court to pursue damages for pain and suffering and loss of earning capacity.

The engineer claims he was ignored and yelled at by his manager, and is now suffering a stress-induced psychological injury.

The engineer commenced working for Invensys Rail in 2001, and was quickly promoted to manage the product development department. He claimed that on a number of occasions he raised

concerns about product safety and quality control procedures, and that this led to his manager yelling and swearing at him. He claims that this caused him to suffer high levels of anxiety because he had "significant responsibility without any power". He was terminated in 2005.

Despite the employer contending that the worker had previously suffered a bipolar disorder unrelated to work, Judge Kennedy found there was nothing to suggest the worker's disorder pre-dated his employment with the company and granted him leave to pursue damages. *Viney v Invensys Rail & Anor* [2011] VCC 598

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