

Bullying is now a criminal offence in Victoria (pending Royal Assent) 2 June 2011

The Crimes Amendment (Bullying) Bill 2011 (Bill) has now been passed by both houses of parliament in Victoria and is pending Royal Assent. This Bill amends the Crimes Act 1958 (Vic) (Crimes Act) to make the offence of stalking apply to situations of serious bullying.

The legislative change is in response to the infamous Café Vamp case which resulted in an employee, Brodie Panlock, committing suicide after being subjected to serious bullying in the workplace. In February 2010, owner Marc Luis Da Cruz, manager Nicholas Smallwood, employees Rhys MacAlpine and Gabriel Toomey and Da Cruz's company were convicted of offences under the Occupational Health & Safety Act 2004 (Vic) (OHS Act) and fined a total of \$335,000.

Offence of stalking now includes bullying

The offence of stalking is set out in section 21A of the Crimes Act and is punishable by a maximum term of 10 years imprisonment. The amendment broadens the 'course of conduct' engaged in by the offender to include behaviour such as making threats to the victim and acting in ways that could reasonably be expected to cause the victim to engage in self-harm.

To be convicted of stalking, the offender must have intended to cause physical or mental harm to the victim. The harm requirement has now been extended to include the intention to cause a victim to engage in self-harm. Mental harm has been defined to include psychological harm and suicidal thoughts.

The Bill also introduced amendments to the Stalking Intervention Orders Act 2008 (Vic) and the Personal Safety Intervention Orders Act 2010 (Vic), which will allow victims to apply for intervention orders to protect themselves against situations of serious bullying.

Similar legislation, making bullying a criminal offence, has not yet been introduced into other States and Territories in Australia.

Bottom line for employers

This amendment to the Crimes Act, makes it clear that threats and abusive words or acts which amount to bullying constitute the offence of stalking.

This legislative change acknowledges the serious consequences for anyone who engages in this type of behaviour.

The OHS Act imposes duties on employers and employees with respect to treatment of anyone in the workplace. Victorian Attorney-General Robert Clark acknowledged that despite the OHS Act having an important role in addressing significant workplace issues, the Café Vamp case demonstrated the need for the worst cases of bullying to be regarded as criminal offences carrying significant punishments. These

cases will generally be investigated by WorkSafe Victoria and in more serious instances be referred to Victoria Police.

The purpose of this legislative change is to address the issue of serious bullying and deter people from engaging in such conduct. Employers must take responsibility to ensure that employees can work in a safe environment that is free from risk, including incidents of bullying. Employers are encouraged to update their bullying policies and educate employees in relation to this legislative change.

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