

CAN MEDIATION STOP BULLYING?

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The short answer regrettably, has to be 'it depends'.

Bullying is defined under most Australian codes as repeated unreasonable behaviour that creates a risk to health and safety. Taken literally, the behaviour must be repeated and it must be potentially unsafe in the view of the everyday reasonable person on the street.

Most people would see bringing parties together and helping them achieve mutual understanding in a way that invokes lasting and positive behaviour change as the best course to take. It is certainly preferable to lodging a formal grievance requiring management or external investigators to spend a considerable amount of time and money determining whether or not there is a 'villain' and a 'victim'.

It must, and should always be, a legitimate option for targets of bullying to exercise their right to lodge a complaint. However, this is not always conducive to producing a lasting, positive outcome between two parties who have to continue to work together after one has complained about the other.

What are some of the weaknesses in the traditional grievance system?

1. By definition, the formal lodgement of a grievance is adversarial, with one side saying the

other side has done something against them. In many incidents I have seen or investigated, this is not so clear-cut and relationships deteriorate such that both parties allege wrongdoing. Invariably, the respondent says the other 'simply got in first' and a counterclaim can soon follow.

2. An employee has to be gutsy and assertive to lodge a complaint (particularly if the alleged bully is their boss) and there is always the potential for backlash once the respondent is advised a complaint has been lodged (even though clauses in the legislation are designed to safeguard against such 'victimisation').

3. Australian culture has a healthy respect for direct, straight-talking confrontation. Those loyal to the bully can try to paint a distorted picture of the target as weak or lacking in integrity for complaining to management rather than confronting the issue with the perpetrator.

4. If bullying is substantiated, respondents can be resentful of the fact that a complaint was made and will often say it was unfair that mediation wasn't attempted. Sometimes the spite and aggression with which this is said does not inspire confidence that mediation would have been safe, let alone effective, but who can prove this after the fact?

What are some of the benefits of mediation?

The two parties have supposed equal status

and legitimate right and opportunity to state their case. If the bully didn't realise they were committing such behaviour and is remorseful, lasting and profound behaviour change can take place as they realise the impact of their actions. They can appreciate that mediation was used in preference to going down the grievance route, which brings with it the possibility of a damning finding on their personnel file.

When can mediation go horribly wrong? What are its limitations?

- When the alleged bully or management pressures the employee to participate in mediation in preference to exercising their right to complain.
- When the bullied party is so aggrieved and resentful that they want 'justice' and don't feel validated by mediation because they want the other party punished.
- When a power imbalance between the two parties means the target of the alleged bullying is too intimidated to speak up during mediation and is attacked or railroaded by a clumsy manager and/or the bully.
- Where the well-meaning but inept manager believes bullying is a 'gloves off/no-holds-barred' conversation between two workers that cannot be undone once it happens

(I've seen the aftermath of plenty of those!).

- Where no firm commitments are made between the parties and, in the absence of disciplinary action, there are no automatic flow-on consequences if the bully 'falls off the wagon' and goes back to their old ways.

Critical success factors for effective mediation outcomes


For mediation to be an effective counter-measure to bullying, it is important both parties indicate they are willing to participate and that some sensible ground rules about balanced participation and respect are agreed upon and upheld/enforced.

Mediation is likely to work best when the bully was previously unaware of their impact and/or appears genuinely remorseful about any perceived wrongdoing.

Just as bullying may have made the target feel unsafe, this unsafe environment cannot be replicated in the mediation setting and be expected to work.

Not only might a clumsy mediation make the relationship between the bully and the target untenable, the target of the bullying may also lose all trust and confidence in the manager.

The golden rule is when in doubt, outsource to an internal expert who has great facilitation skills and high credibility with both parties or use an external, non-commercial mediator.

A well set up and executed mediation may stop bullying but, ironically, the bully or the hapless manager may stop mediation from being considered as a desirable avenue to pursue if it isn't approached with forethought, empathy and great skill. 



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