

Health insights

Significant \$1.3m payout warns employers to take employee bullying and harassment complaints seriously

The Supreme Court of Victoria¹ has sent a solemn message to employers to sit up and listen to employees who make complaints of bullying and harassment in the workplace, by awarding damages in excess of \$1.3 million to a plaintiff suffering psychiatric and physical injuries because her employer failed to provide a safe working environment (*Mathews v Winslow Constructors (Vic) Pty Ltd* [2015] VSC 728).

Ms Kate Mathews alleged that she had been subjected to abuse, bullying and sexual harassment by co-workers while she was employed as a labourer for the defendant company, Winslow Constructors (Vic) Pty Ltd ('Winslow'). The alleged conduct was repeated and severe, including not only being referred to as a "spastic" and a "bimbo", but also sexual harassment (both verbal and physical) and threats of sexual assault.

In July 2010, the severity of the conduct reached intolerable heights, when a colleague threatened Ms Mathews that he was going to "follow [her] home, rip [her] clothes off and rape [her]". Ms Mathews reported the threat to a person who she thought to be responsible for Human Resources and in response, was invited to his house to "have a drink and talk about it". Following this incident, Ms Mathews resigned. Ms Mathews gave evidence that she was reluctant to complain to her immediate superior, because he too was responsible for some of the offensive conduct. On occasions when she did raise concerns, she was met with laughter. When she raised it with her Area Site Manager, he said words to the effect of "leave it with me", but to Ms Mathews' reckoning nothing was done save for the fact that she was moved to another work site for a 10 month period, before being moved back to the original site (upon which the problems recommenced).

Within days of resigning from Winslow Ms Mathews was referred to a psychologist who diagnosed her with high levels of anxiety, stress and depression. Over the ensuing years, she saw numerous psychologists and psychiatrists and her diagnosis was upgraded to a major depressive disorder with concomitant post-traumatic disorder.



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(*Mathews v Winslow Constructors (Vic) Pty Ltd* [2015] VSC 728).

Several of these practitioners gave evidence as to the permanency of Ms Mathews' condition, her need for ongoing treatment and the strong unlikelihood that she would ever be able to return to work. There was some discussion as to whether her condition ought to properly be considered a major depressive disorder, or Bipolar II, but His Honour Forrest J did not consider that this mattered for the purposes of concluding that she had suffered a chronic and significant psychiatric injury that would continue to diminish her quality of life.²

The Court also heard evidence that Ms Mathews had suffered a jaw injury due to grinding, which it accepted as being linked to her psychiatric illness, and therefore to the issues she experienced during her employment at Winslow.

On the fifth day of trial, Winslow admitted negligence and abandoned its original allegation as to Ms Mathews' contributory negligence. The only matter left to be determined by the Court, therefore, was quantum. There were several points of interest in the Court's assessment, the first being its decision to dismiss the fact that Ms Mathews had attended a GP a month before she commenced employment at Winslow with sleep deprivation and symptoms of anxiety and possibly depression. His Honour Forrest J took the view that this was insignificant and that there was no relationship between her condition pre-Winslow, and the serious chronic illness that developed subsequently.

The second point of interest, related to surveillance tape evidence tendered by Winslow which showed Ms Mathews participating in activities such as gardening and going out with her partner during which she demonstrated various emotions such as smiling and engaging with shopkeepers. Winslow made the argument that the difference between her demeanour in the footage versus her demeanour when she attended her doctors bore upon the relativity of the Ms Mathew's evidence as to quantum.³ This was also dismissed by His Honour Forrest J, who found the utility of such footage was limited in a case like this (as opposed to, for example, a back injury case or where a plaintiff has made a false or exaggerated assertion which can be clearly contradicted). This was particularly so, noting that Winslow abstained from presenting any psychiatric evidence despite admitting to having had Ms Mathews assessed by three separate psychiatrists.

His Honour assessed that Ms Mathews was entitled to damages in the order of \$1.36 million, comprising \$380,000 in general damages and the remainder in past and future economic loss.

While the circumstances in this case may seem extreme, it is a reminder to employers of the significant costs that can result if employee complaints of bullying and harassment in the workplace are not received, considered and actioned in an appropriate and timely manner.

To better defend bullying and harassment claims employers should have in place clear bullying and harassment policies that are available and explained to all employees and contractors. Employers should provide training in relation to the policies and management must monitor and enforce compliance.

Complacency and laxity as to the maintenance and execution of appropriate policies dealing with complaints in such circumstances will be received by courts and tribunals with dim regard.

Meridian Lawyers can assist you to understand your obligations and defend bullying and harassment claims.

THIS ARTICLE WAS WRITTEN BY PRINCIPALS SHARLENE WELLARD, KELLIE DELL'ORO AND ASSOCIATE ANNA MARTIN. PLEASE CONTACT US IF YOU HAVE ANY QUESTIONS OR WOULD LIKE MORE INFORMATION.

¹ Mathews v Winslow Constructors (Vic) Pty Ltd [2015] VSC 728

² Ibid, paragraph [32].

³ Ibid, paragraph [28].