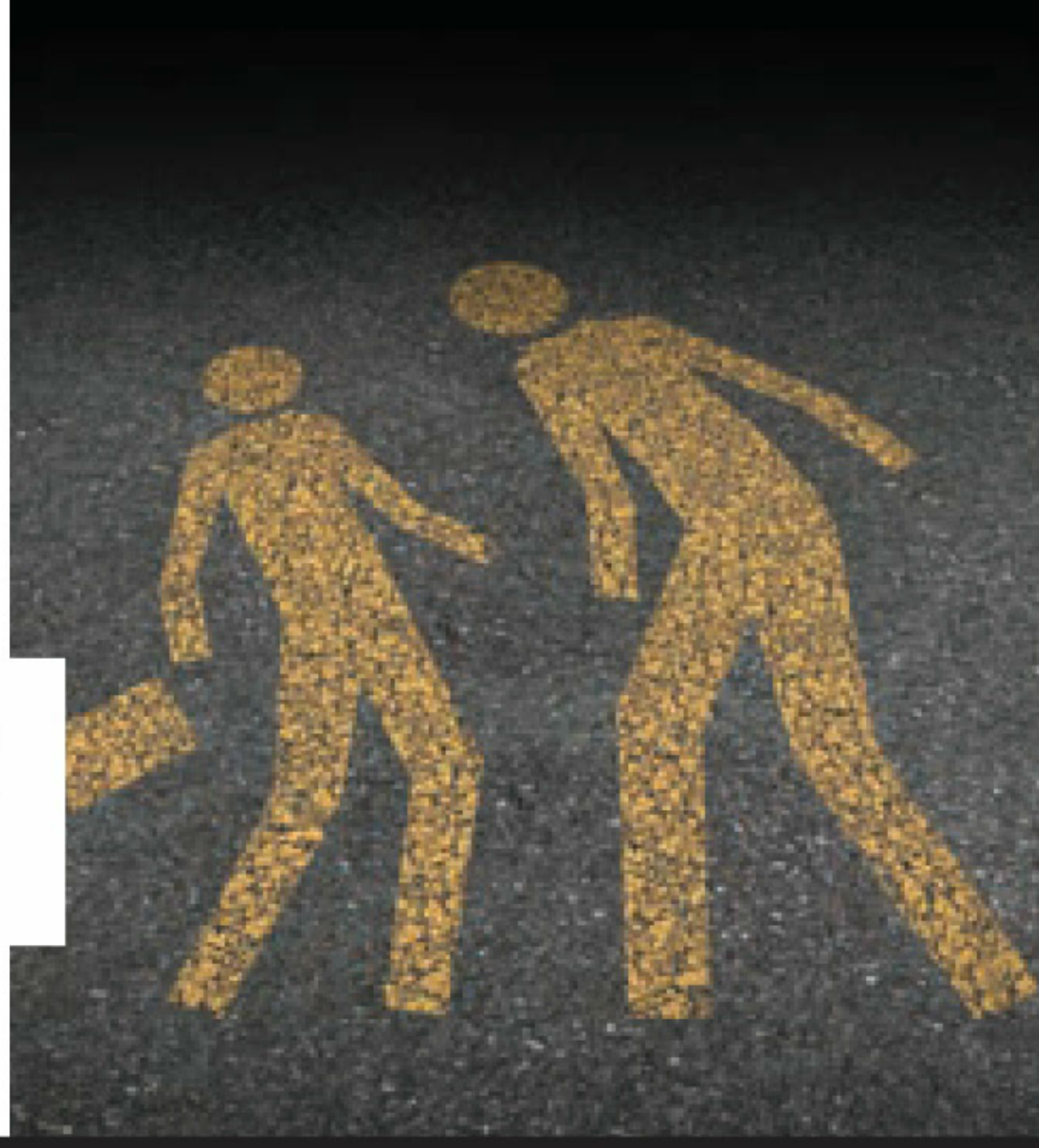


# No room for bullying in the law

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If years of university, HECs debts and an oversupply of graduates to jobs each year wasn't enough to put you off becoming a lawyer in the 21st century, what will?

Lawyers by our own design are competitive, at times pessimistic and regularly self-focused. It is therefore not necessarily surprising that a 2014 study by the Law Council of Australia found 50 per cent of women and 38 per cent of men reported work place bullying.<sup>1</sup>

From the early days of primary school we are exposed to "bullies" in one form or another. Whether it was the tall kid who pinched your lunch money, the sporty kid that excluded you from team sport or the smart kid that made fun of you for not knowing the answer in maths class. But what is workplace bullying?

Under section 789FD of the *Fair Work Act 2009* (Cth) bullying at work as is defined as an individual or group of individuals who "repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and that behaviour creates a risk to health and safety." So where do lawyers draw the line? And why do so many cross it?

Whether it is unreasonable work expectations, inappropriate and disparaging comments and language or unsocial behaviour, bullying in the workplace is not on.

David Maister, a former Harvard Business School professor who left to teach law firms how to be successful writes of three roles within a typical law firm; the finders, the minders and the grinders ("the Maister model").<sup>2</sup> Whilst to some this may be considered somewhat archaic thinking, rightly or wrongly this model still rings true in many of today's firms. It would be

fair to say that this model opens itself up to breeding both culprits and victims of workplace bullying. Properly constructed, the Maister model adopts a pyramid shaped pecking order within a firm. Each role creates its own challenges. The "finders", traditionally the partners, are expected to bring the work in. The minders are to oversee the work and look after the existing clients. Then there are the grinders. The junior lawyers misled in their high school and university days by the bright lights and shiny court scenes from *The Practice* and *Boston Legal*.

Whether providing advice on a commercial dispute, a family law matter, work injury claim, employment or criminal matter, clients expect their lawyer to solve problems. Assisting people and businesses at what is for many one of the most stressful and negative experiences of their life can be extremely rewarding. For many the pressure takes its toll.

Whilst some lawyers (particularly the finders) blame the 1985 tax reforms of the Hawke government as the thing that changed the practise of law, I blame the Internet. In today's technological world where information changes hands at lightning speeds people expect answers five minutes ago. As a profession in a short period of time lawyers have gone from writing letters, sending faxes and occasionally providing comment to broadsheet news to a world of emails, global video conferencing, blogs and social media. These advancements in technology have brought with them a whole new array of unimagined challenges.

Outspoken retired High Court Justice Michael Kirby places the blame for bullying in the profession at the top of the pyramid<sup>3</sup> - the Judiciary. At the 2013 National Wellness for Law forum Justice Kirby

reflected on Judges he had encountered who would take out their "internal stresses" on those senior advocates who appeared before them. In Kirby J's opinion this results in the senior advocate passing on the bullying and stress to their juniors and so on. There is no doubt a fine line between venting "internal stresses" and workplace bullying.

In a 2014 article<sup>4</sup> Suzanne Le Mire and Rosemary Owens considered the conundrum of workplace bullying and the legal profession in great detail. Le Mire and Owens draw focus to "... certain elements ... including organisational change, lack of support from managers, or lack of support from colleagues..." as well as "... work characteristics such as high job demands, low job control, job insecurity, and fatigue from long hours; and work related stress."

Regardless of time and change the challenges that accompany the practise of law do not look to be easing up any time soon. Whilst acknowledgment of a problem is a start, as argued by Le Mire and Owens, the inclusion within the Australian Solicitors' Conduct Rules of specific reference and regulation of workplace bullying would be a good place to begin.

## (Endnotes)

- 1 2014 Law Council Australia National Report on attrition and re-engagement ([http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/NARS%20Report\\_WEB.pdf](http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/NARS%20Report_WEB.pdf)).
- 2 Maister, David H. *Managing The Professional Service Firm*. New York: Free Press Paperback, 1997. Print.
- 3 Lee, Jane. "Bullying Judges Breed Stressful System: Kirby". *The Age*. N.p., 2013. Web. 6 Aug. 2016.
- 4 Le Mire, Suzanne; Owens, Rosemary *A propitious moment?: Workplace bullying and regulation of the legal profession* University of New South Wales Law Journal, The Volume 37 Issue 3 (Dec 2014).