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Brooke Craven
Director
Department of Justice
Office of the Secretary
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31st January 2019

Dear Brooke,

Criminal Code Amendment (Bullying) Bill 2019

Thank you for the opportunity to comment in response to the Criminal Code Amendment (Bullying) Bill 2019 on behalf of the Youth Network of Tasmania (YNOT) and our members.

YNOT understands that the Government has committed to amending the Criminal Code Act 1924 to prosecute cyber bullies, targeting those who use the internet with the intention to cause serious physical or mental harm.

We applaud the Tasmanian Governments commitment to eliminating bullying within our communities; and acknowledge the serious and adverse effects bullying can have on the health and wellbeing of young people. However, YNOT holds grave concerns for the potential impact this Bill will have on the lives of young Tasmanians.

YNOT is opposed to the amendments set out in this Bill. The reasons for which are identified below.

About YNOT

YNOT is a member based peak body representing the interests of young people aged 12-25 years, and the Tasmanian youth sector. We are a not for profit organisation that advocates for, and works collaboratively with Tasmanian young people, the youth sector, and all levels of government to ensure that the voices of our stakeholders are heard. YNOT represents 85,000 young people, 60 YNOT member organisations and approximately 300 youth sector workers, through our regional networks, state-wide.

Our mission is to work with young people, the Tasmanian youth sector, the community, and all levels of government to increase the participation and contribution of young people in the State.

Criminal Code Amendment (Bullying) Bill 2019

YNOT is concerned that bullying and cyber bullying have not been defined in this Bill. We support the view that cyber bullying is an extension of traditional bullying. However there are unique characteristics that distinguish cyber bullying from traditional face to face bullying. This includes but is not limited to the numerous online platforms that can be used, the explicit or hidden nature of cyber bullying, the ability for cyber bully material to reach a wide audience quickly, and evolving technology¹.

YNOT acknowledges the complexity in defining bullying and cyber bullying. However, ambiguity with regard to definitions has the potential to cause confusion amongst young people as to what constitutes bullying and cyber bullying, particularly as it relates to criminal responsibility.

There is no agreed universal definition of cyber bullying in Australia¹. The need to clearly define cyber bullying is recognised at a federal and state level, particularly with regard to law reform and public policy.

YNOT supports the Law Council of Australia's view that a common understanding of behaviour which constitutes cyber bullying is essential in assessing possible law reform options in this area². The need for an agreed universal definition of cyber bullying that recognises the complexity of the issue was also recommended by the Senate Legal and Constitutional Affairs Reference Committee in 2018³.

It is essential that young people understand the boundaries as to what behaviour is considered unacceptable and unlawful with regard to cyber bullying. If clear boundaries are not established there is the risk that more young people will be exposed to the criminal justice system. A criminal offence requires specific and certain definitions to establish boundaries of criminal responsibility⁴.

An agreed universal definition of cyber bullying is required to ensure young people and the wider community understand what constitutes cyber bullying prior to considering any legislative reform in this area.

YNOT believes it would be remiss to introduce legalisation intended to prosecute cyber bullies, without a clear definition of what constitutes bullying and cyber bullying.

Cyber Bullying is a Social Issue

YNOT believes that legislative reform which takes a punitive approach to bullying is not the most effective method of intervention for young people. The best way to deal with bullying behaviour is to prevent it.

Research shows that the adolescent brain is still developing well into early adulthood and that young people are unlikely to be impacted by a legal approach⁵. During adolescence it is not uncommon for young people to act impulsively, misread or misinterpret social cues and emotions, or engage in dangerous or risk-taking behaviour⁶. Socially responsible decision making has been shown to be less common among adolescents than adults⁷. Punishing young people for engaging in bullying behaviour is unlikely to result in long term behavioural change and is counterproductive. Applying criminal convictions may result in the stigmatisation of young people and potentially impact upon their future, such as securing employment.

“...bullying arises as children and young people explore and push social and relational boundaries, and undergo key transitions through school and puberty. During this process, they will make mistakes, misjudge or not fully consider the consequences of their actions, and an excessively punitive response from our legal system would mean these impulsive mistakes and lack of judgement could result in long-lasting impacts on their future lives”⁸.

YNOT believes that young people should be held accountable for their actions and we support the principals of restorative justice. However, we do not believe law reform will effectively deter young people from engaging in bullying behaviour. Instead, emphasis needs to be placed on the social drivers of bullying behaviour and the familial, community, and systemic responses to bullying.

The circumstances surrounding the behaviour of young people who engage in bullying is embedded in an array of complex social, behavioural, emotional, and psychological contexts. There are many reasons why young people bully others. Young people may be victims of family violence, abuse or neglect, bullying by other young people, they may feel powerless themselves or suffer from low self esteem. Some young people bully others to gain power and status amongst their peers⁹.

As a community we have a responsibility to address the needs of all young people. This includes those engaging in bullying behaviour and the bullying victims. Research shows that young people who engage in bullying behaviour and those who are bullying victims at school are at a significant risk for a range of antisocial, criminal, and poor health outcomes later in life^{10,11}. Bullying is often a result of underlying issues that can be addressed in proactive and restorative ways.

Failure to adequately address these issues means that the Bill will do little to change bullying behaviour. YNOT strongly advocates for a social and public health approach to reducing and responding to bullying amongst young people as opposed to legislative reform.

We urge the State Government to invest in community-wide, youth-led education and awareness initiatives. Early intervention and prevention programs are essential to affect long term social, cultural and behavioural change.

It is important that the wider community has a shared understanding of what constitutes bullying and cyber bullying, and knowledge of how to prevent, reduce, and respond to bullying in the community.

Youth Consultation and Education

YNOT is concerned that young people have not been adequately consulted regarding legislative reform in this area. Article 12 of the United Nations Convention on the Rights of the Child¹² states that all “children have the right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account”. Young people are important agents for social change and must be consulted on issues that affect their lives.

YNOT commends the State Governments approach to combating Bullying within Tasmanian schools by investing three million dollars over four years to the ‘Combating Bullying Initiative’. YNOT supports whole of school preventative strategies that target school culture, deal proactively with bullying behaviour, and strengthen the resilience of young people. Teachers, parents, carers, and the wider school community have a critical role to play in preventing and responding to bullying and cyber bullying amongst young people.

YNOT recommends that the Tasmanian Government endorse recommendation 2, 5.7 of the Senate and Legal Constitutional Affairs Committee³ which states:

“The committee recommends that Australian governments approach cyber bullying primarily as a social and public health issue. With this in mind, the committee recommends that Australian Governments consider how they can further improve the quality and reach of prevention and early intervention measures, including education initiatives, both by government and non-government organisations, to reduce the incidence of cyber bullying among children and adults”.

YNOT is concerned that the efficacy and impact of anti-bullying programs within Tasmanian schools have not been adequately evaluated. We also understand that not all Tasmanian schools have introduced evidenced based anti-bullying programs, policies or procedures to combat bullying.

We urge the Tasmanian Government to evaluate existing programs to determine their effectiveness in reducing the incidences of bullying and cyber bullying amongst young people. The full impact of these programs should be known and understood prior to legislative reform.

YNOT also supports the Tasmanian Law Reform Institutes recommendation⁴ to impose requirements on educational institutions to mandate the implementation of anti-bullying policies and procedures in both government and non- government schools in Tasmania.

Final Comments

YNOT believes a social and public health approach to reducing and responding to bullying is more likely to support long term behavioural, cultural and social change as opposed to legislative reform. Initiatives and programs that focus on educating the community, strengthening families, building the resilience of young people, promoting respectful relationships and engaging whole school communities in preventing and responding to bullying will have a much greater chance of protecting all young people.

It is vital that young people are included in the co-design of early intervention and prevention initiatives designed to combat bullying amongst their peers. Young people need to feel empowered and take ownership to effectively prevent and address bullying behaviour.

We believe this Bill will have unintended consequences for young people, particularly given that bullying and cyber bullying have not been defined.

Thank you for the opportunity to provide comment on a matter that will impact on the lives of young Tasmanians.

Kind regards,



Tania Hunt
Chief Executive Officer

References

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