

T A S M A N I A

L A W R E F O R M

I N S T I T U T E

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23 January 2019

Dept of Justice
Office of the Secretary
GPO Box 825
Hobart tas 7001

By email: haveyoursay@justice.tas.gov.au

Dear Madam / Sir,

Anti-Bullying Bill 2019

In 2016, the Tasmania Law Reform Institute (*the Institute*) published a report into Bullying (*Bullying Report*) and made a suite of recommendations to improve legal responses to bullying in Tasmania. Given our previous investigation of this issue, we appreciate the opportunity to provide feedback on the draft *Criminal Code Amendment (Bullying) Bill 2019* (the *Bill*).

In general, we welcome the proposed amendments. However, the Institute considers that the narrow scope of the Bill misses the opportunity to implement a more comprehensive response to bullying.

Media statements have referred to the Bill as delivering on the government's commitment to confront cyber-bullying. Responses to the Institute's Bullying Issues Paper unanimously opposed treating cyber-bullying as a discrete practice, rather than addressing the full spectrum of bullying behaviours. We are pleased that, despite the media emphasis, the proposed amendments apply to bullying more broadly. We urge the government to apply the provisions equally to complaints regarding online and other forms of bullying.

Our brief comments on the Bill are set out below.

Amendments to s.192(1)

The Bill proposes to extend the offence in s.192 of the *Criminal Code Act 1924* to "Stalking and Bullying", and to amend s.192(1) by inserting the following additional actions that can establish the offence

(ea) making threats to the other person;

(eb) directing abusive or offensive acts towards the other person.

These amendments are consistent with the key recommendation of the Bullying Report, and the Institute supports them.

In the Bullying Report, the Institute also recommended the inclusion of two additional actions :

- using abusive or offensive words to or in the presence of the other person;
- performing abusive or offensive acts in the presence of the other person.

We maintain that including the above actions (in addition to the proposed new paragraphs (ea) and (eb)) would capture more effectively the range of bullying behaviours that workers, students, and others have reported experiencing in Tasmania. In all instances, the threshold for the behaviour to constitute an offence will be whether it was intended to cause physical or mental harm, apprehension or fearfulness.

The Institute strongly supports the proposed amendments to extend the offence to actions intended to cause “extreme humiliation”, and the clarification that physical and mental harm includes self-harm.

Scaled response

In his response to the Institute’s Bullying Issues Paper, the Director of Public Prosecutions noted that a criminal justice response to bullying is only appropriate in very serious cases.

The Bill proposes to insert s.192(6) to require consent from the DPP before commencing a prosecution. The Institute expects that consent would be given in relation to bullying offences in only “very serious cases”.

The Institute recognises that the range of bullying behaviours and their impacts demand some differentiation in response. The Bullying Report recommended the following:

- Broadening the definition of “stalking” in ss.106A(1) and 106B(1)(d) of the *Justices Act 1959* to include “stalking and bullying” consistent with the amended s.192 of the *Criminal Code Act 1924*. Significantly, this would allow those affected by bullying to apply for restraint orders
- Developing a civil framework that institutes a mediated and restorative justice response to bullying, whether by:
 - introducing a mediation procedure for restraint order applications, or
 - extending the functions of the Anti-Discrimination Commissioner to hear all bullying matters (not just those featuring discriminatory behaviour).

The Institute recommends that consideration be given to amending the Bill to implement these measures.

Other issues

The Institute also urges the Tasmanian government to consider further legislative and policy reform to address other issues raised in the Bullying Report, including:

Workplace bullying

The Bullying Report noted the gap in options for workers affected by bullying who were not able to use the *Fair Work Act 2009* or who had left the workplace (often as a result of the bullying). The Institute recommended that the Tasmanian Industrial Commission’s jurisdiction be extended to allow the Commission to deal with bullying complaints from workers in those situations, and to allow orders to be made for financial remedies in appropriate circumstances.

The Bullying Report also recommended that the *Work Health and Safety Act 2012* be amended to include an explicit duty to prevent bullying in the workplace. Such a duty would augment the primary duty to ensure the health (including psychological health) and safety of workers.

Bullying policies for schools

The Bullying Report recommended that schools be required to adopt anti-bullying policies.

Schedules 3 and 4 of the *Education Regulations 2017* now require registered schools to have bullying policies, and to report on deaths or hospitalisations of students as a result of incidents that occurred while the student was “in the care of the school”. The Institute supports this requirement.

Given the government’s stated commitment to addressing cyber-bullying, which generally occurs off school grounds, consideration should also be given to legislative models which extend duty of care and reporting responsibilities to off-site bullying when the school is made aware of the bullying (for example, *Anti-Bullying Bill of Rights*, NJ Stat Ann 18A: 37-15.3).

If you wish to discuss these comments, please do not hesitate to contact us.

Yours sincerely,



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