



**Submission to the inquiry into the adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying 2017**

Submitted by:	Victorian Women Lawyers Association Inc ( <b>VWL</b> )
Sent by email:	Committee Secretary Senate Legal and Constitutional Affairs Committee PO Box 6100 Parliament House Canberra ACT 2600
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## Response to questions taken on notice

### 1. Section 26B of the *Summary Offences Act 1953* (SA)

Section 26B of the *Summary Offences Act 1953* (SA) was enacted as a result of the *Summary Offences (Filming Offences) Amendment Act 2012*. It came into effect on 9 May 2013 in response to changing social and technological trends. In particular, Attorney-General John Rau said that the legislative action was commenced after an incident in 2011 involving school children who had arranged another student to be 'king hit' and for that incident to be filmed and uploaded onto the internet.<sup>1</sup>

The enactment of this section made it an offence to film and distribute footage of a humiliating or degrading act. There are various defences to the section, including that the conduct was for legitimate public purpose. A legitimate public purpose includes for the purpose of educating and informing the public, for law enforcement or public safety or for medical, legal or scientific purposes. The maximum penalty is imprisonment for one year, unless the person who took part in the humiliating or degrading act also filmed that act without consent, then the maximum penalty is imprisonment for two years.

The laws that were enacted as a result of the *Summary Offences (Filming Offences) Amendment Act 2012*, including section 26B, have been criticised due to the fact that cyberbullying is still governed by a myriad of laws in a "piecemeal manner".<sup>2</sup> In particular, it has been argued that the legislation fails to formulate a legal definition of "cyberbullying", and hence, does not bring conceptual clarity to the manner in which cyberbullying is understood in the community.<sup>3</sup>

Given our members are purely based in Victoria, it is not common that they are required to apply the criminal legislation of another State or Territory. It is for this reason that we are not able to comment on any prosecutions specifically under section 26B of the *Summary Offences Act 1953* (SA). Further, we have not been able to locate any reported decisions of cases which have been prosecuted under this section of the act. This could be due to a number of reasons, including the combination of the offence being quite new and the delay currently being experienced by the Courts. Further, matters of this type often settle before proceeding to trial and, as a result, is not documented in a judgment that is made available to the public. Additionally, we note that it is arguable that prosecution under this section may be impacted upon by various investigative challenges associated with securing the necessary evidence to allow for a prosecution. In particular, this relates to the various difficulties discussed in our written submission,

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<sup>1</sup> Deputy Premier John Rau, 2013. *Film your crime, do the time*, Media Release, 10 May, Government of South Australia.

<sup>2</sup> Langos, C. (2013). *Cyberbullying, associated harm and the criminal law*. University of South Australia.

<sup>3</sup> Ibid.



such as those difficulties resulting from cross-jurisdictional issues due to a lack of coordinated response at the Commonwealth level.<sup>4</sup>

VWL notes that the South Australian Government drafted a submission with respect to this enquiry and trust that they may be in a better position to provide further information in this regard should you find it necessary.

VWL thanks the committee for the opportunity to appear at the hearing. Should you have any further questions, please do not hesitate to contact us.

**Michelle Berry**

President

Victorian Women Lawyers

**Hayley Chester & Alex Dworjanyn**

Law Reform Committee Co-Chairs

Victorian Women Lawyers

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<sup>4</sup> Ibid.

