



9 March 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Parliament House
Canberra ACT 2600

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Dear Committee Secretary

Adequacy of existing cyberbullying laws – questions on notice

Thank you for providing me with the opportunity to give evidence at the Legal and Constitutional Affairs References Committee's hearing regarding cyberbullying on 9 February 2018.

I am writing to provide my answers to the questions taken on notice, which are set out in full below.

CHAIR: I wanted to ask you both: your submissions talk about a variety of state laws and, indeed, Ms Mitchell, you talked it about being desirable that we were able to codify them in a national framework and, indeed, Ms D'Souza, you highlight that it's unlikely that people would use national laws when there are state laws, which, in turn, makes it very unlikely that national policing efforts would link in very well with our existing national law. So what should we be codifying? You can take this on notice, if you like, or just provide comment now. What should we be codifying—noting that we don't want to target children within that—and would you actually like to see a wind-back of some of the provisions that do currently target children or that include children, not that they target them explicitly?

Ms Mitchell: I would potentially like to take that on notice. I did read the Attorney-General's submission, which provides some of this information, and I'd like to look again at what action has been taken, using the Criminal Code to date, and at how serious those cases are and where the thresholds have been reached because that's not something I'm particularly familiar with.

I note that the Federal Attorney General's Department submission to the inquiry indicated that there have been 927 charges against 438 defendants proven under section 474.17 of the Commonwealth *Criminal Code* since its introduction in 2004,

and that there is likely to be a similar level of prosecutions on such matters by state and territory agencies. As I am unaware of the age of the perpetrators or the particular circumstances of these cases, it is difficult to comment on the efficacy of the *Criminal Code* in relation to the breadth of possible cyberbullying scenarios, or of its power of deterrence. I note too that the Commonwealth Director of Public Prosecutions (CDPP) requires assessment of juveniles in accordance with its Prosecutions Policy.

I suggest that the utility of the *Criminal Code* in responding to the range of contemporary cyberbullying offences perpetrated by children and its relationship with state and territory laws be taken up directly with the CDPP and/or the Attorney General's Department. Similarly, I suggest the CDPP be asked to furnish greater detail on the breakdown of the cases that have been prosecuted.

CHAIR: I'm interested in answers you both gave, I guess de-emphasising a direct link between bullying and cyberbullying and suicide; nevertheless, you would characterise that bullying has significant impacts and the potential for significant mental-health impacts. Could both of you characterise the impacts you think it does have?

Ms D'Souza: Just to clarify, is that cyberbullying or bullying?

CHAIR: Perhaps both, and what the differences might be—whether the impact of cyberbullying is the same as face-to-face bullying. Clearly it's not physical, but the impact in terms of creating anxiety and depression in a child or an adult might be similar.

Ms Mitchell: Again, I might take this on notice. I think I'm aware of one study that looked at this, but I can't quite recall. There's not a lot of material out there of research that's been done, but I think there is one study. I'll go back and find it and provide the findings to you about the differential or not of the different experiences and their impact on a child's mental health and wellbeing.

Below are links to three recent articles on studies examining and comparing the impacts of cyberbullying and traditional bullying on the psychological health of children in the United States:

- Jing Wang, Tonja R Nansel and Ronald J Iannotti, 'Cyber Bullying and Traditional Bullying: Differential Association with Depression' (2011) 48(4) *J Adolesc Health* 415–417. Available at: [http://www.jahonline.org/article/S1054-139X\(10\)00343-5/fulltext](http://www.jahonline.org/article/S1054-139X(10)00343-5/fulltext).
- Robin M Kowalski and Susan P Limber, 'Psychological, Physical, and Academic Correlates of Cyberbullying and Traditional Bullying' (2013) 53(1) *J Adolesc Health* S13-S20. Available at: [http://www.jahonline.org/article/S1054-139X\(12\)00413-2/fulltext](http://www.jahonline.org/article/S1054-139X(12)00413-2/fulltext).
- Craig N Hase, Simon B Goldberg, Douglas Smith and Jessica Campaign, 'Impacts of Traditional Bullying and Cyberbullying on the Mental Health of Middle School and High School Students' (2015) 52(6) *Psychology in the Schools*. Available at: https://www.researchgate.net/publication/277088472_Impacts_of_traditional_b

bullying and cyberbullying on the mental health of middle school and high school students.

The study described in the 2011 article found that depression was associated with both traditional forms of bullying (physical, verbal and relational) and cyberbullying. According to the study in the 2013 article, the “present data suggest that there is clear overlap between involvement in traditional forms of bullying and cyberbullying”, and the psychological correlates of the two types of bullying resembled one another. Both articles conclude there is a need for further research on cyberbullying.

According to the 2015 article, the study’s findings suggest that “although traditional and cyber forms of bullying tend to target the same victims, traditional bullying is more uniquely associated with negative psychological outcomes.”

I hope the above information assists the Committee. If you wish to discuss this matter further, please contact me on

Yours sincerely

Megan Mitchell
National Children’s Commissioner