

Dear Committee Members, **SUBMISSION No. 81**

I wish to make a short written submission in general relating to the inquiry into Cyber Safety but more specifically into the area of cyber bullying which I submit is also a form of cyber crime and hence also applicable to this inquiry.

Before I go into the details of my submission, I have included here the URL link to a podcast version of a story from the program website for the US PBS program "Newshour with Jim Lehrer" originally aired last year. The by-line for the story was as follows:

Cyber Law

A Missouri woman was indicted on charges connected to the suicide of a 13-year-old MySpace user. An Internet law expert examines the case. and the related podcast/MP3 link for this story is as follows. I believe the date is embedded in the path and filename:

["http://www-tc.pbs.org/newshour/rss/media/2008/05/16/20080516_bully28.mp3"](http://www-tc.pbs.org/newshour/rss/media/2008/05/16/20080516_bully28.mp3) Will we here in Australia at least look at the circumstances behind, and evidence presented in, this case to develop laws here in Australia that, hopefully, would enable law enforcement and the courts to charge those who might do the same thing here with either manslaughter or, more ideally, murder and subsequently be able to be convicted of one of these offences.

I would assume that such a change to the law may require discussions between the Commonwealth, States and Territories on this issue and hence would probably have to include both the relevant Ministers for Communications and Justice, respectively, as I believe and understand that it would be applicable to both of these portfolios. The Judge in any case should be able to determine, based on the facts, whether to apply a sentence for manslaughter or murder but to have the flexibility to be able to apply the maximum sentence available for the respective crime as well as being mandated to apply no less than a minimum sentence which would be based on the standards that would be expected by the community at large.

Also, we have seen on our TV's in recent days ("Today Tonight" and "A Current Affair") a case in which mobile phone video has been uploaded to websites such as YouTube, etc, which include an "incident" in which a mother could be heard egging her daughter on. In this particular case, it took a public outcry for the Police in the particular State to actually take action and place charges on the girl and her mother, both of whom couldn't be named "for legal reasons". As such, I think the use of mobile phone cameras, and other forms of video recording device, to take this type of video should also be covered under laws referring to the use of such devices in such cases with similar laws put in place to cover this forms of what would also be bullying. Police should not be put into the position of being forced to take action, reactively, because of public outrage but rather should have the legal powers to take the required action without having to be pushed "kicking and screaming", if I can use those words, into taking the action that should, in the normal cause of events, be expected of them without question.

Finally, I would just like to suggest that any laws that relate to what is and isn't considered to be appropriate student-teacher "contact" should require, where necessary and appropriate, changes or amendments to the law to be made to remove any possible ambiguity that might exist in the current law preventing or at least requiring a teacher to consider both their own safety and the possible legal ramifications of intervention to break up a fight before they actually take any action

that may be required in a timely manner including whether they should call for appropriate assistance before intervening.

In closing then, I think the criminal code needs to be brought up to date in terms of all forms of "cyber" crime where possible in a pro-active way as well as clarifying the role and duty of teachers with respect to playground brawls and a teacher's obligations if they see any of their students fighting on the way to or from school. I've heard it said by teachers that they believe their responsibility for their students starts and finishes at the school's gates fearing that they could be charged with a criminal offence if they were to intervene outside the school's gates.

Thanking you for the opportunity to make this submission.

Regards,

Paul Myers