



Honourable Yvette D'Ath MP
Attorney-General and Minister for Justice
Minister for Training and Skills

In reply please quote: #3090667

04 JAN 2016

Mr Neil Laurie
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Dear Mr Laurie

I refer to petitions 2415-15 and 2520-15 about adult neighbourhood bullying, tabled in the Legislative Assembly on 1 December 2015.

The petitioners specifically ask that action be taken to introduce bully-specific legislation and misconduct restraining orders and that law and justice agencies be compelled to enforce stalking laws.

The Government thanks the petitioners for raising this important issue. Bullying in all its forms is wrong. In Queensland, there already exists a number of legal avenues to address the behaviour described in the petitions.

The *Peace and Good Behaviour Act 1982* (PGB Act) provides a civil means to remedy breaches of the peace. For example, the PGB Act applies to the situation where a person (the complainant) has been threatened with assault, bodily injury or property damage by another person (the defendant) and the complainant is in fear of the defendant. The complainant is required to make the complaint to a Justice of the Peace (JP), who if satisfied the complaint is substantiated, may issue a summons for the defendant to appear before a Magistrates Court. The magistrate will consider the complaint and may either dismiss the complaint or make an order that the defendant keep the peace and be of good behaviour for such time as the magistrate thinks fit. It is an offence to breach the terms of an order. A fact sheet about the Peace and Good Behaviour orders can be found on the Queensland courts website: <http://www.courts.qld.gov.au/about/fact-sheets>.

Queensland's Criminal Code also contains a range of offences that may apply to the type of offending behaviour outlined in the petitions, including unlawful stalking under Chapter 33A.

Chapter 33A of the Criminal Code makes it an offence to unlawfully stalk another person. This crime is punishable by a maximum penalty of five years imprisonment, increasing to seven years in certain circumstances. In Queensland, stalking conduct includes a broad range of acts, such as: loitering near, watching or approaching a person or a place where the person lives or works; contacting a person in any way, including electronically; or intimidating, harassing and threatening acts, whether or not involving violence or a threat of violence.

(2)

The offence is established where the person engages in conduct intentionally directed at the victim in circumstances where: it would cause apprehension or fear reasonably arising in the circumstances of violence to the stalked person or another person (or their property); or causes a detriment (which encompasses serious mental, psychological or emotional harm) reasonably arising in all of the circumstances. It does not matter whether the person intended to cause the victim fear or detriment.

Under Chapter 33A of the Criminal Code, the court can also impose a restraining order, of any length, upon the person charged with unlawful stalking. The restraining order can be made whether or not the person is convicted of the offence and even if the person is found not guilty or the prosecution is otherwise discontinued. It is an offence to breach a restraining order, which carries a maximum penalty of 40 penalty units or one year imprisonment.

Further, under Queensland's *Penalties and Sentences Act 1992*, a sentencing court may impose a Non-Contact Order in addition to the penalty imposed for an offender convicted of an offence committed against the person of their victim. The order can be for up to two years and prohibits the offender from contacting or approaching the victim and/or from attending a stated place.

The court may make a Non-Contact Order if satisfied that, unless the order is made, there is an unacceptable risk that the offender would, for example, injure the victim or the person who was with the victim when the offence was committed (associate); harass the victim or associate; or damage the property of the victim or associate. Similar to restraining orders under Chapter 33A of the Criminal Code, contravention of a Non-Contact Order is an offence.

When a complaint is made alleging the commission of a criminal offence, the Queensland Police Service (QPS) is generally responsible for the conduct of an investigation. If the investigation uncovers sufficient evidence to support the complaint, identify the person responsible and satisfy the requirements of the offence, police have the power to charge the person. The decision to charge a person with the commission of a criminal offence is a matter for the QPS.

The decision to prosecute serious criminal offences is a matter for the Director of Public Prosecutions (DPP), an independent statutory authority. The DPP has issued guidelines to assist with the exercise of prosecutorial decisions. The guidelines are available from the Queensland DPP website at: www.justice.qld.gov.au. The decision to prosecute under the guidelines is based on a two tiered test: is there sufficient evidence; and does the public interest require a prosecution?

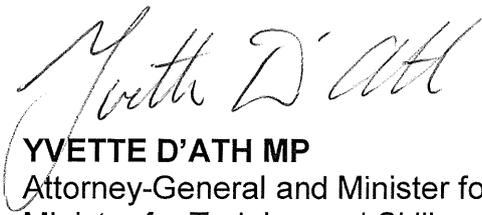
If there is sufficient reliable evidence of an offence, the issue then is whether discretionary factors nevertheless dictate that the matter should not proceed in the public interest. The guidelines include a number of discretionary matters to be considered in assessing the public interest. The guidelines also specifically state that a prosecutor must apply the prosecution test even to situations where a magistrate has committed a person for trial.

(3)

I again thank the petitioners for their interest and hope this comprehensive response provides an outline of the avenues available to all Queenslanders.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Yvette D'ATH', written in a cursive style.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
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