



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

In reply please quote: 572305/1; 3259413

20 JUN 2016

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Mr Neil Laurie
The Clerk of the Parliament
Parliament House
Cnr Alice and George Streets
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Neil
Dear Mr Laurie

I refer to petition 2532-16 (the petition) tabled in the Legislative Assembly on 24 May 2016, requesting that the House consider amending Queensland's laws to include offences of cyberbullying, bullying which results in psychological and self-harm, and inciting suicide. The petition also requests amendments to education laws to include bullying as a form of unacceptable behaviour punishable in accordance with relevant legislation.

Firstly, I extend my deepest sympathy to Michael and Joanne Piva concerning the tragic loss of their daughter Breannah. I cannot begin to comprehend the sorrow and suffering that Mr and Mrs Piva have endured.

The petition specifically seeks amendments to the *Criminal Code Act 1924* and the *Education Act 1994*. However, these Acts derive from and apply solely to the laws of Tasmania, not Queensland. Nonetheless, I will address the concerns raised in the petition with reference to the laws applicable to Queensland.

Queensland's Criminal Code, incorporated in the *Criminal Code Act 1899*, contains a range of offences to combat physical and cyberbullying, in particular, Chapter 33A.

Under Chapter 33A, it is an offence to stalk another, punishable by a maximum penalty of five years imprisonment, increasing to seven years in certain circumstances.

In Queensland, stalking conduct includes: contacting a person in any way, including by email or via the use of any technology; leaving offensive material where it will be found by, given to or brought to the attention of the person; an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence.

The offence is established where the person engages in conduct intentionally directed at the victim in circumstances where the conduct would cause apprehension or fear, reasonably arising in the circumstances, of violence to the stalked person or another person (or damage to their property). The offence also applies where the conduct causes a detriment (which encompasses serious mental, psychological or emotional harm) reasonably arising in all of the circumstances to the stalked person or another person. It is irrelevant whether the person intended to cause the victim fear or detriment.

Additionally, under Chapter 33A, the court can impose a restraining order, of any length, upon the person in relation to the victim. The restraining order can be made whether or not the person is convicted of stalking and even if the person is found not guilty or the prosecution is otherwise discontinued. It is an offence to breach a restraining order.

In Queensland, the Criminal Code also provides a range of assault and threat related offences that may apply to bullying conduct, depending on the nature of the conduct. Further, criminal responsibility for an offence is extended to any person who aids the principal offender in committing the offence including aiding by encouragement. For example, a person filming an act of physical bullying may be liable to conviction for the assault by virtue of their encouragement of the assault through their conduct and continued presence.

The Commonwealth *Criminal Code Act 1995* also includes various telecommunications offences that apply to bullying conduct in Queensland depending on the nature of the conduct, such as: using a carriage service to menace, harass or cause offence (maximum penalty of three years imprisonment); and using a carriage service to make a threat to kill or cause serious harm (maximum penalty of up to 10 years imprisonment).

The Commonwealth Government also passed laws in 2015 establishing an independent Children's e-Safety Commissioner (the Commissioner). The Commissioner performs a national protective role, backed by legislation, to get harmful bullying material targeted at Australian children quickly removed from social media sites. The Commissioner officially commenced his role on 1 July 2015 and has powers to receive and investigate complaints about cyberbullying material and issue enforceable notices to social media services to remove cyberbullying material within 48 hours.

The Commissioner also has powers to direct an individual who posts cyberbullying material directed at an Australian child to remove the offensive material, refrain from posting further cyberbullying material or to apologise to a child who has been targeted.

The Commissioner has an important role in supporting and promoting the education of children about online safety and the impacts of cyberbullying.

As outlined, there are a range of offences to combat physical and cyberbullying currently in force in Queensland.

With regard to the request to amend the education laws of Queensland, the relevant legislation is the *Education (General Provisions) Act 2006 (Qld)* (EGPA). The EGPA establishes broad powers for principals to control and regulate student discipline, including by implementing disciplinary decisions such as suspension and exclusion. Sections 282 and 292 of the EGPA set out the grounds for suspension and exclusion, respectively. The grounds include, relevantly; misbehaviour, conduct that adversely affects, or is likely to adversely affect, other students and that the student's attendance at the school poses an unacceptable risk to the safety and wellbeing of other students or of staff.

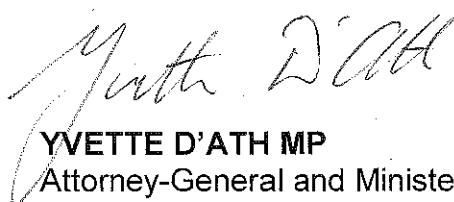
(3)

Given the broad powers currently available to principals under the EGPA, the Department of Education and Training does not consider that any amendment specific to bullying behaviour is necessary.

Please be assured that the Government will continue to monitor the sufficiency of the current laws to ensure that they appropriately address this very serious issue.

I trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read "Yvette D'Ath".

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