



Queensland

Criminal Code (Filming or Possessing Images of Violence Against Schoolchildren) Amendment Bill 2010



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2010

A Bill

for

An Act to amend the Criminal Code in relation to schoolchild bullying material to provide, in particular, for immediate confiscation of devices used for filming or possessing images of violence against schoolchildren

The Parliament of Queensland enacts—	1
Clause 1 Short title	2
This Act may be cited as the <i>Criminal Code (Filming or Possessing Images of Violence Against Schoolchildren) Amendment Act 2010</i> .	3 4 5
Clause 2 Code amended	6
This Act amends the Criminal Code.	7
Clause 3 Insertion of new ch 22AA	8
Before chapter 22A—	9
<i>insert—</i>	10
‘Chapter 22AA Filming or possessing images of violence against children	11 12 13
‘229BA Definitions	14
‘In this chapter—	15
<i>bullying</i> means an act of physical violence, or physical or verbal intimidation or abuse against a person that a reasonable adult would consider—	16 17 18
(a) is unreasonable conduct; and	19
(b) could cause the person embarrassment, humiliation or other distress if visually recorded.	20 21
<i>prescribed offence</i> means an offence against section 229BB, 229BC, 229BD or 229BE.	22 23

schoolchild means a child who is enrolled to attend a State school, or non-State school, within the meaning of the *Education (General Provisions) Act 2006*.

schoolchild bullying material means material—

(a) that is not child exploitation material under section 207A; and

(b) that, in a way likely to cause offence to a reasonable adult, describes or depicts someone who is, or apparently is, a schoolchild under 16 years being subjected to bullying.

‘229BB Involving child in making schoolchild bullying material

‘(1) A person who involves a child in the making of schoolchild bullying material commits a crime.

Maximum penalty—

(a) if the person was an adult when the person committed the crime—5 years imprisonment or 40 penalty units; or

(b) if the person was a child when the person committed the crime—1 year’s imprisonment or 8 penalty units.

‘(2) In this section—

involves, a child in the making of schoolchild bullying material, includes—

(a) in any way concerns a child in the making of schoolchild bullying material; and

(b) attempts to involve a child in the making of schoolchild bullying material.

‘229BC Making schoolchild bullying material

‘(1) A person who makes schoolchild bullying material commits a crime.

Maximum penalty—

[s 3]

(a)	if the person was an adult when the person committed the crime—5 years imprisonment or 40 penalty units; or	1 2
(b)	if the person was a child when the person committed the crime—1 year’s imprisonment or 8 penalty units.	3 4
‘(2)	In this section—	5
	<i>make</i> , schoolchild bullying material, includes—	6
(a)	produce schoolchild bullying material; and	7
(b)	attempt to make schoolchild bullying material.	8
‘229BD	Distributing schoolchild bullying material	9
‘(1)	A person who distributes schoolchild bullying material commits a crime.	10 11
	Maximum penalty—	12
(a)	if the person was an adult when the person committed the crime—5 years imprisonment or 40 penalty units; or	13 14
(b)	if the person was a child when the person committed the crime—1 year’s imprisonment or 8 penalty units.	15 16
‘(2)	In this section—	17
	<i>distribute</i> , schoolchild bullying material, includes—	18
(a)	communicate, exhibit, send, supply or transmit schoolchild bullying material to someone, whether to a particular person or not; and	19 20 21
(b)	make schoolchild bullying material available for access by someone, whether by a particular person or not; and	22 23
(c)	enter into an agreement or arrangement to do something mentioned in paragraph (a) or (b); and	24 25
(d)	attempt to distribute schoolchild bullying material.	26
‘229BE	Possessing schoolchild bullying material	27
	‘A person who knowingly possesses schoolchild bullying material commits a crime.	28 29

Maximum penalty—	1
(a) if the person was an adult when the person committed the crime—2 years imprisonment or 16 penalty units; or	2 3
(b) if the person was a child when the person committed the crime—6 months imprisonment or 4 penalty units.	4 5
‘229BF Defences for ss 229BB–229BE	6
‘(1) It is a defence for a person charged with a prescribed offence to prove that—	7 8
(a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, scientific or public benefit purpose; and	9 10 11
(b) the person’s conduct was, in the circumstances, reasonable for that purpose.	12 13
<i>Example of something made for a public benefit purpose—</i>	14
a current affairs television program showing children being subjected to bullying	15 16
‘(2) Whether conduct was engaged in for a purpose mentioned in subsection (1)(a) is a question of fact.	17 18
‘229BG Forfeiture of schoolchild bullying material and things used to make, distribute or possess the material	19 20
‘(1) This section applies if a person is prosecuted for a prescribed offence.	21 22
‘(2) Whether or not the person is convicted of the offence, the court may order the photograph, visual image, or material that is the subject of the offence be forfeited to the State.	23 24 25
‘(3) If the person is convicted of the offence, the court may also order that anything used to commit the offence be forfeited to the State.	26 27 28
<i>Example of a thing used to commit the offence—</i>	29
a computer, camera, mobile phone, sound recording device, video recorder	30 31

[s 3]

- ‘(4) Subsections (2) and (3) apply whether the thing to be forfeited
has been seized or is in its owner’s possession. 1 2
- ‘(5) The court may also make any order that it considers
appropriate to enforce the forfeiture. 3 4
- ‘(6) This section does not limit the court’s powers under the
Penalties and Sentences Act 1992, the *Criminal Proceeds*
Confiscation Act 2002 or another law. 5 6 7
- ‘(7) When forfeited to the State, the thing becomes the State’s
property and may be dealt with as directed by the chief
executive. 8 9 10

**‘229BH Seizure of prescribed device containing schoolchild
bullying material 11 12**

- ‘(1) If a police officer reasonably believes a prescribed device has
just been used, or is being used, to commit a prescribed
offence, the police officer may seize the device. 13 14 15
- ‘(2) If a school principal or teacher reasonably believes a
prescribed device within the school boundaries has just been
used, or is being used, to commit a prescribed offence, the
school principal or teacher may seize the device. 16 17 18 19
- ‘(3) A teacher who seizes a prescribed device under subsection (2)
must give the device to the school principal. 20 21
- ‘(4) A police officer, school principal or teacher who seizes a
prescribed device under this section must give a receipt for it
to the person from whom it was seized if the person asks for a
receipt. 22 23 24 25
- ‘(5) The receipt must describe generally the seized device and its
condition and must be given to the person from whom the
device was seized by the next business day after the device is
seized. 26 27 28 29
- ‘(6) A school principal who seizes a prescribed device under
subsection (2), or is given a prescribed device under
subsection (3), must— 30 31 32
- (a) give the device to a police officer if the school principal
considers it appropriate to do so; or 33 34

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- (b) otherwise, return the device to the person from whom it
was seized. 1 2
- ‘(7) If, after examining a device seized under subsection (1), the
police officer who seized it no longer has the belief mentioned
in the subsection, the police officer must return the device to
the person from whom it was seized. 3 4 5 6
- ‘(8) If, after examining a device given to a police officer under
subsection (6), the police officer does not believe the device
had just been used, or was being used, to commit a prescribed
offence, the police officer must return the device to the person
from whom it was seized. 7 8 9 10 11
- ‘(9) A prescribed device required to be returned to a person under
subsection (6)(b), (7) or (8) must be returned to the person by
the next business day after the device is seized. 12 13 14
- ‘(10) Subsections (3) and (6) to (9) apply despite section 682. 15
- ‘(11) In this section— 16
- prescribed device*** means a mobile phone, computer or other
thing. 17 18
- Example of other thing—* 19
- a camera, sound recording device or video recorder 20
- school principal*** means, if the school has no position by that
name, the person responsible for the school’s day-to-day
management. 21 22 23
- teacher—*** 24
- (a) means a person who undertakes duties in a school that
include any of the following— 25 26
- (i) delivering an educational program; 27
- (ii) assessing student participation in an educational
program; 28 29
- (iii) otherwise administering an educational program;
and 30 31
- (b) includes a teacher’s aide.’. 32