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LawTalk Blog



The call to implement bullying laws in South Australia

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The tragic suicide death of 14 year old Amy “Dolly” Everett earlier this year following relentless bullying has reignited calls for the implementation of bullying laws across Australia.

The advent and rise of [social media has seen an increase in bullying](#) throughout the country, with a recent [Australian Education Department survey](#) finding an astounding 5000 students in South Australian schools are being bullied on a weekly basis.

In previous generations, bullying has often been perceived as a normal part of growing up, an inevitable interaction or a ‘rite of passage’ that helped children ‘toughen up’ or ‘character build.’

Thankfully, a mostly general consensus now exists amongst the public that bullying can seriously impact on a child’s wellbeing, development and overall mental health; and in some cases this can lead to fatal consequences. Most now recognise that bullying is in fact *not* a normal phase that each child should pass through, and is certainly *not* something to simply ‘put up with’ as a part of life.

Our current laws, or lack thereof however, currently fail to reflect this plurality of opinion.

The suicide death of 13 year old Adelaide student, Libby Bell in particular, prompted a review of the South Australian anti-bullying laws by the State government in late 2017. The year 8 Seaford Secondary College student tragically took her own life last year after a prolonged period of bullying in the schoolyard, in public places and over the online mediums of Facebook, Snapchat and

Instagram.

What's in the Statutes Amendment (Bullying) Bill 2017?

Answering calls to implement legislation, the Statutes Amendment (Bullying) Bill 2017 ("the Bill") was introduced into the South Australian Legislative Council in late September by the state leader of the Australian Conservatives, the Hon. Dennis Hood. Affectionately known in the community as 'Libby's Law', the Bill intends to target and punish serious forms of bullying, including cyberbullying.

The South Australian Bill is modelled on Victoria's response to serious and ongoing bullying, the *Crimes Amendment (Bullying) Act 2011 (Vic)*. The Act was introduced following the death of Brodie Panlock, a 19 year old Melbourne waitress who took her own life after suffering relentless workplace bullying.

Section 20C of the SA Bill introduces the offence of bullying. A person will be considered guilty of an offence under this section where they:

- Intend to cause harm or are reckless as to whether harm will be caused to another;
- Commit more than 1 act of bullying over a period of not less than 7 days; and
- Cause harm or serious harm to the other person.

For the purposes of the Bill, bullying may include:

- Expressly or implicitly threatening to cause harm;
- Degrading, humiliating, disgracing or harassing another person;
- Publishing or transmitting offensive material by way of the internet or via electronic communication;
- Giving or sending offensive material; and
- Using abusive or offensive language.

While "harm" is defined as physical or mental harm, "serious harm" means:

- Harm that endangers a person's life; or
- Harm that consists of, or results in, serious and protracted impairment of a physical or mental function; or
- Harm that consists of, or results in, serious disfigurement.

It is not necessary to prove that the perpetrator intended to cause serious harm to the victim and, where the victim self-harms, it is not necessary to prove that the defendant knew, or should have known that the victim may self-harm.

What are the proposed penalties for bullying?

In instances of severe bullying, where it is proved that serious harm was caused, the Bill provides a maximum penalty of 10 years imprisonment.

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Where the bullying falls within a lesser scale, it attracts a maximum penalty of 5 years imprisonment. The Bill also allows for alternative verdicts at the judge's discretion where the offensive bullying has not been proven beyond reasonable doubt but a lesser offence has instead been established. Such penalties may include fines and/or community service.

Despite opposition from the Youth Affairs Council of SA and the Commissioner for Children and Young People, who implore that criminal law is not the answer and endorse further education, policies and procedures in schools, the Bill was passed in the Legislative Council in mid-November 2017.

The Bill will be considered by the House of Assembly for its concurrence early this year.

Let's hope for the sake of saving lives and protecting people that this legislation or something similar is implemented soon by South Australia's Parliament or other appropriate action is taken to combat the increasing problems being caused by bullying in our society.

Today's blog has been written by Legal Intern, [Julia Arena](#). Julia is the winner of the 2014 UniSA Torts Prize sponsored by Andersons Solicitors. The article has been settled by Partner in Family Law, [Eva Bailey](#).

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