

# COMMUNITY LEGAL CENTRES TASMANIA

1 February 2019

Department of Justice  
Strategic Legislation and Policy  
GPO Box 825  
Hobart TAS 7001

*via email:* [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

To Georgina Hay,  
**Re: *Criminal Code Amendment (Bullying) Bill 2019***

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Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Criminal Code Amendment (Bullying) Bill 2019* ('the Bill').<sup>1</sup>

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We support the Government's intent to amend the *Criminal Code Act 1924* (Tas) and provide for the prosecution of persons who either in person or through electronic forms of communication intend to cause physical or mental harm to others. However, the use of the criminal law to address bullying is only one of fifteen recommendations contained in the comprehensive review of bullying by the Tasmania Law Reform Institute.<sup>2</sup> We strongly believe that bullying must be tackled holistically and encourage the Government to adopt the TLRI's 'tiered response' comprising both criminal and civil justice responses as well as the introduction of legislative requirements to implement anti-bullying policies and procedures in schools.

- ***Amendments to the Criminal Code Act 1924 (Tas)***

The proposed amendments to section 192 of the *Criminal Code Act 1924* (Tas) to broaden stalking to include bullying are supported. We also endorse the application of the same mental element for both offences, namely that an offender has intent to cause harm, or actually causes harm and knew or ought to have known that harm would be likely to occur.

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<sup>1</sup> CLC Tas would like to acknowledge Zoey Dwyer who assisted in the preparation of this response.

<sup>2</sup> Tasmania Law Reform Institute, *Bullying*, Final Report No. 22 (January 2016).

We believe the inclusion of bullying in the *Criminal Code Act 1924* (Tas) will demonstrate the communities' abhorrence of bullying behaviour, act as an educative tool for members of the community about the seriousness with which the law views such conduct and empower victims to make complaints.

However, the criminal law is a blunt instrument and should be targeted at the most intransigent and persistent offenders. In many cases, a criminal response to bullying will not be appropriate either because it involves a youth offender or because the offending is not serious enough. In such circumstances, alternative dispute resolution processes should be offered.

- ***Justices Act 1959* (Tas)**

Whilst we strongly support the inclusion of bullying in the definition of 'family violence', the application of family violence orders is restricted to "conduct committed by a person, directly or indirectly, against that person's spouse or partner".<sup>3</sup> It is unclear why the Bill has not been broadened to allow *any* person subject to serious bullying to apply for a restraining order. On policy grounds it is difficult to understand why a victim should only be able to apply for an order designed to stop the bullying behaviour if it involves their spouse or partner. We therefore strongly recommend that the Bill be amended to include amendments to section 106B of the *Justices Act 1959* (Tas) as recommended by the TLRI.<sup>4</sup>

- **Director of Public Prosecutions Consent**

The requirement that the Director of Public Prosecutions provide consent before a prosecution for bullying is commenced is an important safeguard to ensure that the charge is only made in appropriate cases. Nevertheless, we strongly believe that the circumstances justifying a prosecution of bullying should be publicly available, particularly as persons capable of being charged with the new offence and under 18 years of age is likely to be disproportionately high. We therefore recommend that the Director of Public Prosecutions publicly release guidelines outlining the considerations taken into account in determining the prosecution of bullying behaviour.

- **Mediation**

As well as the amendments to the *Criminal Code Act 1924* (Tas) and the *Family Violence Act 2004* (Tas) and the inclusion of amendments to the *Justices Act 1959* (Tas) we also urge the Government to consider the TLRI's proposal for the development of a "second-tier, civil framework that institutes a mediated and restorative justice response to bullying".<sup>5</sup> The advantage of adopting this approach, as noted by the TLRI is that "facilitating early intervention could prevent more serious harm eventuating for the victim and also support the bully to change his or her behaviour".<sup>6</sup>

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<sup>3</sup> Section 7 of the *Family Violence Act 2004* (Tas).

<sup>4</sup> Tasmania Law Reform Institute, *Bullying*, Final Report No. 22 (January 2016), recommendation 4.

<sup>5</sup> Tasmania Law Reform Institute, *Bullying*, Final Report No. 22 (January 2016), recommendation 5.

<sup>6</sup> Tasmania Law Reform Institute, *Bullying*, Final Report No. 22 (January 2016), paragraph 3.4.18.

- **Workplace Bullying**

Additionally, bullying must be addressed in the workplace. Whilst it is acknowledged that the Bill goes some way to addressing workplace bullying, the amendments proposed will only address the most serious of cases. With the *Fair Work Act 2009* (Cth) unable to review bullying if a worker has already left the workforce and unable to make an order requiring the payment of a financial remedy,<sup>7</sup> it is clear that reform must be introduced at a state level. We encourage the Government to introduce the reforms proposed by the TLRI including:

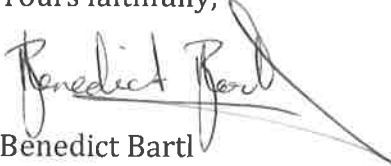
- Granting jurisdiction to the Tasmanian Industrial Commission to deal with bullying complaints from workers unable to use the Fair Work jurisdiction and'
- That a duty to prevent bullying be imposed on employers and;
- That employers include in their anti-bullying policies and procedures a process by which bystanders can report bullying within the workplace and provisions that protect employees who report or intervene from reprisal.

- **School regulation**

Finally, studies point to Australia having amongst the highest incidence of bullying in schools globally and that teachers are ill-equipped to stop bullying behaviours.<sup>8</sup> The lack of resourcing in Tasmanian schools has seen Equal Opportunity Tasmania observe that "many students believe complaints of bullying are not being addressed within schools and that little is done to prevent escalation of bullying behaviour".<sup>9</sup> We strongly agree with the TLRI recommendation that would mandate anti-bullying policies and procedures at schools.<sup>10</sup>

If you have any queries, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl  
Policy Officer

**Community Legal Centres Tasmania**

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<sup>7</sup> Section 789FF of the *Fair Work Act 2009* (Cth).

<sup>8</sup> Ken Rigby, What can schools do about cases of bullying? (2011) 29(4) *Pastoral Care in Education* 275 as found in Tasmania Law Reform Institute, *Bullying*, Final Report No. 22 (January 2016) at paragraph 3.6.25.

<sup>9</sup> Tasmania Law Reform Institute, *Bullying*, Final Report No. 22 (January 2016) at paragraph 3.6.25.

<sup>10</sup> Tasmania Law Reform Institute, *Bullying*, Final Report No. 22 (January 2016), recommendation 9.