



# Cyberbullying and young Tasmanians

December 2014

YNOT is the peak body representing the voice of Tasmanian youth



## About YNOT

The Youth Network of Tasmania (YNOT) is the peak body for the non Government youth sector and young people in Tasmania. Integral to the work of YNOT is the youth participatory and consultative structure, the Tasmanian Youth Forum (TYF) which represents the needs and interests of young people aged 12-25 years.

## Our Vision

A Tasmania where young people are actively engaged in community life and have access to the resources needed to develop their potential.



Approved by: Joanna Siejka  
Chief Executive Officer  
Suite 4a, Mayfair Plaza  
236 Sandy Bay Road  
Sandy Bay 7005

## Contents

About YNOT.....	2
Our vision .....	2
Contents .....	3
Introduction .....	4
Background .....	5
Responsibility for addressing cyberbullying .....	7
Current legal position .....	8
Children’s eSafety Commissioner .....	9
Australian research on cyberbullying .....	11
Creating a new offence .....	12
School programs on cybersafety .....	14
Chloe’s Voice – Tasmanian perspective .....	16
Strategies to address bullying behaviour with the young person responsible for the bullying behaviour .....	17
Legislative approaches in other jurisdictions .....	17
Conclusion .....	19

## Introduction

In recent times there has been increasing discussion and research about cyberbullying as an issue that is having a negative effect on the lives of young people in Australia.

The Youth Network of Tasmania (YNOT) is the peak non-government body for the youth sector and young people in Tasmania. YNOT conducts research and facilitates consultations to develop policy positions on issues that are significant for young people, so as to inform advocacy work on behalf of young people in Tasmania.

In this capacity, YNOT identified a need to consider the issue of cyberbullying, as a number of serious incidents of cyberbullying in Tasmania have been reported through the media. Through this research, YNOT also seeks to discover the factors that contribute to cyberbullying and strategies to assist young people who have engaged in cyberbullying to improve their behaviour.

The purpose of this document is to explore the current cyberbullying context; to discuss the measures that are already in place to address cyberbullying and comment on action proposed for the future. It is clear that no single measure will adequately address cyberbullying, nor does the responsibility for reducing cyberbullying lie with any one person or organisation. Therefore it is vital that all strategies to address cyberbullying share a consistent message and are working towards common goals.

From the research that YNOT has conducted, there are three broad measures that we believe would assist in reducing the occurrence of cyberbullying, and consequently a number of recommendations have been made throughout this document. YNOT supports:

- The Federal Government's plan to establish a Children's e-Safety Commissioner, whom would take a leadership role in online safety and have the ability to request the removal of cyberbullying content. YNOT recommends that the Commissioner works with each State and Territory Government to develop a specific strategy for each region, and to clarify how the current legislation of each jurisdiction applies to cyberbullying;
- Research based school education programs (for example Cybersmart or eSmart Schools) that teach students about online safety and encourage them to be good 'digital citizens'. YNOT recommends that such programs are introduced into all Tasmanian schools; and
- Youth friendly websites featuring evidence based information about cyberbullying, and referrals. YNOT recommends that these sites are promoted to young people and to adults, so that there is a good general understanding within the community of what cyberbullying is, the effect it has on young people, and how it can be dealt with.

YNOT emphasises that cyberbullying is a continuing issue and even if comprehensive efforts are made now, it is important that efforts to reduce cyberbullying do not lose momentum. Ongoing education is necessary to ensure that we all remain informed, as technology and social media trends change over time. YNOT believes that widespread benefits would be achieved through collaboration between the Tasmanian Government and the Children's eSafety Commissioner, upon their appointment, to develop a clear strategy to address the issue of cyberbullying for young people in Tasmania.

The recommendations made throughout this document are listed below.

**Recommendation One:** *That programs and initiatives aimed at tackling cyberbullying are evidence based and designed to address the needs of both the young people who have been the target of the bullying, and the young people who have exhibited the bullying behaviour.*

**Recommendation Two:** *That information resources aimed at adults are developed and reviewed regularly, to allow parents and teachers to remain informed about online safety as technology changes.*

**Recommendation Three:** *That young people are supported to become good 'digital citizens' through school programs, and that online safety remains a priority in the National Curriculum.*

**Recommendation Four:** *That the Tasmanian Government, either alone or in cooperation with the Children's eSafety Commissioner (upon their appointment) clarify how existing Tasmanian legislation applies to cyberbullying behaviour, and that the advice is publicised widely to promote greater community understanding of the issue.*

**Recommendation Five:** *That the Tasmanian Government collaborate with the Children's eSafety Commissioner to develop a specific anti-cyberbullying strategy for Tasmania's young people.*

**Recommendation Six:** *That school programs such as Cybersmart and eSmart Schools are introduced into all Tasmanian schools, to teach students to be good 'digital citizens' by encouraging students to ensure that their online interactions are respectful and that they act responsibly to keep themselves safe online.*

**Recommendation Seven:** *That school policies to address bullying and cyberbullying focus on counselling and the principles of restorative justice, rather than zero tolerance approaches that may stigmatise students who have engaged in bullying behaviour.*

## Background

Cyberbullying is currently a topical issue in Australia. In recent years there has been a greater focus on bullying generally and as we begin to understand more about the reach and potential implications of the internet and social media, cyberbullying has emerged as an increasing problem. The intention behind this document is to explore the current context that surrounds cyberbullying in Australia, and more specifically, in Tasmania. However it is important to remember that cyberbullying is an extension of bullying behaviour, expressed through a different medium; therefore cyberbullying cannot be addressed without considering traditional bullying.

Although bullying is a topic that is frequently discussed, a definition of bullying that is agreed by stakeholders does not exist. The Australian Human Rights Commission (AHRC) describes bullying as repeated negative words or actions which cause distress, and a risk to

the wellbeing of the person at whom they are targeted<sup>1</sup>. There is a power imbalance between the person or group of people who are responsible for the bullying behaviour, and the person who is bullied.

Generally, the features that are consistently cited are that bullying behaviour:

- is intended to cause harm to the person who is the target of bullying;
- is repeated; and
- poses a risk to the wellbeing of the person who is the target of bullying.

Similarly, there is no clear definition of cyberbullying, but it is commonly understood to involve the use of technology such as emails, text messages, websites and social media sites to bully and cause distress to the person who is the target of the bullying. It may involve malicious or offensive messages to or about the person who is the target of bullying, spreading rumours, impersonating the targeted person or sharing images or videos intended to embarrass or humiliate the person who is the target of the bullying. There is potential for cyberbullying to reach a large 'audience' as cyberbullying material is easily forwarded to other recipients or shared publicly online.

It is generally accepted that face to face bullying behaviour must be repeated to be considered bullying, but it is unclear whether such online behaviour needs to occur more than once to amount to cyberbullying, or whether one targeted incident will constitute cyberbullying. This can be further complicated, particularly where the cyberbullying content has been shared, reposted by others, or forwarded to multiple recipients, as this has the potential to increase the harm caused to the person who is the target of the bullying, even if only one piece of cyberbullying content has initially been generated.

There has been much discussion of what the best approach is to reducing both face to face bullying and cyberbullying, but there is no clear answer. In recent years many high profile campaigns calling for new cyberbullying offences have been launched, often by organisations that have been set up in response to specific incidences of bullying and cyberbullying. Although the efforts of these organisations are commendable, they often do not have access to many resources. In comparison, Government at the Federal, State and Territory levels are developing strategies to reduce the incidence of bullying and cyberbullying, and have the benefit of considerable resources including research and expert advice in the fields of law, psychology and education. Non-government organisations are also undertaking important work in respect of cyberbullying.

Although it is important to denounce bullying behaviour, it is essential that we do not stigmatise the young people who are involved in bullying. Therefore YNOT believes it is appropriate that parties are referred to as the person responsible for the bullying behaviour, and the person or people who are the target of bullying behaviour. It is important to distinguish between reprimanding the bullying behaviour itself and the individual. Bullying and cyberbullying are complex behaviours so it is necessary to consider the reasons behind the bullying behaviour and try to address these issues with the young person, so they

---

<sup>1</sup> Australian Human Rights Commission. (n.d.). *Cyberbullying – Human rights and bystanders* [Fact sheet]. Retrieved from <http://bullying.humanrights.gov.au/cyberbullying-human-rights-and-bystanders>

understand the effect of their behaviour on others and are given the opportunity to alter their behaviour.

**Recommendation One:** *That programs and initiatives aimed at tackling cyberbullying are evidence based and designed to address the needs of both the young people who have been the target of the bullying, and the young people who have exhibited the bullying behaviour.*

## Responsibility for addressing cyberbullying

There are many varying opinions about who should take responsibility for tackling cyberbullying; whether it should be the Government, schools or parents<sup>2</sup>.

YNOT supports a model that enables all of these groups to have input and to share the burden for this important task. The ideal situation would involve the Federal Government sending a clear message to Australians that cyberbullying is not acceptable, by creating the position of the Children's eSafety Commissioner, who will coordinate cyberbullying prevention efforts and provide information to schools and parents. Schools will also be supported to develop policies on bullying and cyberbullying and to promote a school culture that prevents bullying from occurring. Ideally schools will respond to any incidences of cyberbullying quickly and deal with the matter in a proportionate manner to the behaviour.

YNOT also believes that it is important that parents have access to evidence based resources that assist them to speak with, and provide guidance to their children about their online activities. Information is particularly valuable to parents whose children are using technology that they themselves are not familiar with. To this end, YNOT acknowledges the efforts of the Federal Government to address cyberbullying, and more specifically, supports the Cybersmart resources developed by the Australian Communications and Media Authority (ACMA). ACMA's Cybersmart program aims to encourage young people to become 'digital citizens' who are able to enjoy the benefits of the internet while being aware of, and acting to protect themselves from, the potential negative consequences of internet use.

YNOT supports ACMA's research based resources, which also include classroom materials for teachers and comprehensive information for adults about the risks to children and young people when using social networking sites and playing online games. The Cybersmart website is an invaluable resource and it would benefit from increased promotion within the community, given its relevance to many different groups within society.

Traditionally families take responsibility for setting standards of behaviour for their children, and ideally parents will monitor their children's online activity, as appropriate to their child's age. Clear lines of communication between parents and schools are vital in ensuring the anti bullying message is strong, consistent and well supported. It is especially important that parents and schools partner when bullying or cyberbullying has occurred to develop a strategy to address the behaviour.

---

<sup>2</sup> Heath, P. (30 July 2014). Who's responsible for tackling cyberbullying? *Sydney Morning Herald*. Retrieved from <http://www.smh.com.au/comment/whos-responsible-for-tackling-cyber-bullying-20140729-zy0xv.html>

YNOT also supports the ThinkUKnow program, which is a website designed to educate parents about how to keep their children safe, while they are online<sup>3</sup> and features links for reporting child sexual exploitation, inappropriate content and spam. The website represents a partnership between the Australian Federal Police (AFP) and the Northern Territory, Queensland, South Australia, Tasmania and Western Australia Police forces, with the support of other industry organisations. ThinkUKnow has recently launched a youth site for young people aged 11-17 and there are plans to develop another site to cater to younger children. School and community organisations are able to request a ThinkUKnow presentation for adults about how to help children to use technology safely<sup>4</sup>.

YNOT suggests that the best possible approach will include collaboration between the Government, schools and families to foster an environment in which young people treat each other with respect and use technology in a responsible way.

**Recommendation Two:** *That information resources aimed at adults are developed and reviewed regularly, to allow parents and teachers to remain informed about online safety as technology changes.*

**Recommendation Three:** *That young people are supported to become good 'digital citizens' through school programs, and that online safety remains a priority in the National Curriculum.*

## Current legal position

Although we do not have any offences under current Australian law that specifically refer to bullying or cyberbullying, Federal and State and Territory laws may apply to instances of cyberbullying, depending on the circumstances. Under the Commonwealth *Criminal Code Act 1995*, it is an offence to use a carriage service (the internet) to make a threat, or to menace, harass or cause offence<sup>5</sup>, or to use a telecommunications network with intention to commit a serious offence<sup>6</sup>. There have been relatively few prosecutions under this legislation, and examples include instances where offensive content was posted on the memorial facebook page of a deceased child<sup>7</sup>; where a former friend made threats via text messages which resulted in the recipient committing suicide<sup>8</sup>; and a recent example where a woman who was repeatedly harassed by her partner via text messages subsequently committed suicide<sup>9</sup>.

---

<sup>3</sup>ThinkUKnow website.

<sup>4</sup>Book a ThinkUKnow Presentation (n.d.). Retrieved from <http://www.thinkuknow.org.au/site/makeabooking.asp>

<sup>5</sup> *Criminal Code Act 1995* (Cth). Ss 474.15, 474.17.

<sup>6</sup> *Criminal Code Act 1995* (Cth). S 474.14.

<sup>7</sup> Keim, T. (2011, March 25). Facebook troll Bradley Paul Hampson jailed for posting child porn on tribute pages for dead children. *The Courier-Mail*. Retrieved from <http://www.couriermail.com.au/news/queensland/facebook-troll-bradley-paul-hampson-jailed-for-posting-child-porn-on-tribute-pages-for-dead-children/story-e6freoof-1226028117673>

<sup>8</sup> Milovanovic, S. (2010, April 9). Man avoids jail in first cyberbullying case. *The Age*. Retrieved from <http://www.theage.com.au/victoria/man-avoids-jail-in-first-cyber-bullying-case-20100408-rv3v.html>

<sup>9</sup> Silva, K. (2014, October 28). Gold Coast man jailed over abusive text messages. *Brisbane Times*. Retrieved from <http://www.brisbanetimes.com.au/queensland/gold-coast-man-jailed-over-abusive-text-messages-20141028-11d2wv.html>

Each State and Territory also has stalking laws, which may apply to cyberbullying, depending on the circumstances. For example in the Tasmanian *Criminal Code Act 1924*, the offence of stalking includes publishing offensive material by electronic means or using any form of electronic communication in a way that could be expected to cause the other person to feel fearful or apprehensive<sup>10</sup>. This provision would potentially apply to many of the common examples of cyberbullying that are heard through anecdotal evidence; however no cases have yet been prosecuted in Tasmania.

As previously stated, there is no agreed definition of bullying; however repetition of the bullying behaviour is a feature across most of the popular definitions. It is uncertain where one cyberbullying event is shared or viewed by many people, whether each additional action to share or like the material counts as repetition of the cyberbullying.

Therefore cyberbullying behaviour already has the potential to lead to criminal charges, but as these stalking offences are yet to be applied to cyberbullying in Tasmania, it is unknown how they would be prosecuted.

**Recommendation Four:** *That the Tasmanian Government, either alone or in cooperation with the Children's eSafety Commissioner (upon their appointment) clarify how existing Tasmanian legislation applies to cyberbullying behaviour, and that the advice is publicised widely to promote greater community understanding of the issue.*

## Children's eSafety Commissioner

While in opposition, the Coalition convened a working group to consult with parents, children, industry and the community, which informed the development of their *Policy to Enhance Online Safety for Children*<sup>11</sup>.

One of the most significant features of the policy is the creation of a dedicated Children's e-Safety Commissioner, which is set to be introduced into legislation before the end of 2014. It is expected that the role of the Commissioner will include:

- coordinating advice and information to schools and parents about keeping children safe online;
- educating young people and the community about how the current legislation applies to cyberbullying;
- developing positive relationships with social media websites and service providers; and
- taking action to remove harmful or cyberbullying material where the site or the individual have been asked to remove the content, but have failed to do so.

YNOT supports the creation of an e-Safety Commissioner, particularly as this role will focus on developing relationships with social media and other service providers. Anecdotally, requests to social media sites to remove cyberbullying material have been ineffective in the past, as these sites are reluctant to remove content or are slow to respond. YNOT is of the

---

<sup>10</sup> *Criminal Code Act 1924* (Tas). S 192.

<sup>11</sup> The Coalition Government. (2013, September). The Coalition's Policy to Enhance Online Safety for Children Retrieved from <http://lpaweb-static.s3.amazonaws.com/Coalition%202013%20Election%20Policy%20-%20Enhance%20Online%20Safety%20for%20Children.pdf>

opinion that one of the important aspects of the role of the Commissioner will be to make requests to facilitate the rapid removal of cyberbullying content from social media sites. The Commissioner will receive and assess cyberbullying referrals from individuals to determine whether the material is targeted at and likely to cause harm to an Australian child. Where this threshold is met, the Commissioner would act on behalf of the referring individual, who will already have attempted to resolve the matter through the site's complaints process.

Another positive aspect of the Commissioner's role will be their ability to act as a central point for the coordination of cyberbullying prevention efforts and to organise the flow of information to parents and schools. The Australian Communications and Media Authority (ACMA)<sup>12</sup> is already doing valuable work in this space, as are other non-government organisations such as the Alannah and Madeline Foundation. YNOT believes that having the Children's eSafety Commissioner act as a central point from which cyberbullying programs and information are coordinated, would reduce duplication and increase awareness of cyberbullying as a community issue.

For example, the Federal Departments of Education and Communications are working together to develop cybersafety education resources for use in schools. These include:

- *National Safe Schools Framework* – The framework represents a collaboration between the Federal Government and all State and Territory Governments to develop principles to assist schools to build a safe and respectful school environment;
- *Safe Schools Hub* – A website that features resources to support the National Safe Schools Framework. The website contains a Safe Schools Toolkit which assists schools to implement the program, and information pages aimed at parents and students;
- *Bullying. No Way!* – Is an educational website that discusses bullying in all its forms. It contains information relevant to the whole community and includes specific information for teachers, students, parents and young children;
- *Cybersmart Program* – is a program delivered by ACMA which aims to educate young people about how to safely utilise the benefits of the internet. The program includes classroom educational materials for teachers and tailored information to different age groups.
- *Cybersafety Help Button* – Is a program that installs a help button on computers or mobile devices through which young people can access help and advice about their internet use. The button provides links to Kids Help Line counselling service, the Australian Federal Police for reporting inappropriate content, and also links to the reporting pages for popular social networking and online game websites.

The Federal Government examples above represent just a few of the many strategies and programs that operate in Australia to reduce cyberbullying. Although the efforts of different organisations address different aspects of the issue, it is inevitable that there is some overlap between the information produced, and potentially some inconsistency. In addition to coordinating the cyberbullying message, YNOT believes it would be valuable for the Children's eSafety Commissioner to clarify how the current Federal and State laws apply to

---

<sup>12</sup> Australian Communications and Media Authority Cybersmart website.

cyberbullying and provide information to young people about how they can report cyberbullying behaviour.

Another aspect of the *Coalition's Policy to Enhance Online Safety for Children*, is their proposed civil infringements system. The Children's eSafety Commissioner would be responsible for investigating complaints from the public and would be able to issue individuals or social media sites with a request to quickly remove the cyberbullying material<sup>13</sup>. If the request to remove content is not complied with, the Commissioner would be able to issue an infringement notice with an attached fine as a penalty.

Although in theory, the rapid removal of cyberbullying content that has the potential to cause harm or emotional distress to young people is a good idea, YNOT acknowledges the administrative difficulties with this system, particularly in respect of social media sites that are based overseas. YNOT is also concerned by the suggestion in the discussion paper that the civil infringement system could potentially use mediation between the person responsible for, and the target of, the cyberbullying. YNOT does not believe that mediation is appropriate, given there is often a power imbalance between parties to cyberbullying, and mediation works on the principle that participants are equal and should negotiate to find a compromise between their conflicting positions.

**Recommendation Five:** *That the Tasmanian Government collaborate with the Children's eSafety Commissioner to develop a specific anti-cyberbullying strategy for Tasmania's young people.*

## Australian research on cyberbullying

The National Centre Against Bullying held their biennial conference in August 2014 and the topic was *Beyond the Schoolyard*. The Hon Paul Fletcher MP, the Parliamentary Secretary to the Minister for Communications spoke about the cyberbullying research the Coalition has commissioned since they formed Government. One of the reports, which concerned the prevalence of cyberbullying estimated that for Australians aged 8-17, the prevalence of cyberbullying within a 12 month period is 20%. The research also found that "the consequences of cyberbullying can be more far reaching and have more serious effects than bullying in the schoolyard"<sup>14</sup>. Mr Fletcher MP told the conference that there is also evidence that the effects of cyberbullying can be long lasting, with some people who are the targets of cyberbullying experiencing low self esteem, mental health issues and thoughts about suicide.

YNOT is concerned about the increased potential of cyberbullying to cause harm, because it can reach the person who is the target, wherever they are and at any time of day, making it difficult for that person to avoid. Also concerning is the fact that the person responsible for

---

<sup>13</sup>Australian Government. (2014, January). *Enhancing Online Safety for Children – Public Consultation on key election commitments*. Retrieved from [http://www.communications.gov.au/\\_\\_data/assets/pdf\\_file/0016/204064/Discussion\\_Paper\\_-\\_Enhancing\\_Online\\_Safety\\_for\\_Children.pdf](http://www.communications.gov.au/__data/assets/pdf_file/0016/204064/Discussion_Paper_-_Enhancing_Online_Safety_for_Children.pdf)

<sup>14</sup>Fletcher, P, Parliamentary Secretary to the Minister for Communications. (2014, August). Speech to the National Centre Against Bullying Conference *Beyond the Schoolyard*. Retrieved from <http://www.paulfletcher.com.au/speeches/other-speeches/item/1107-national-centre-against-bullying-conference-wednesday-august-6-2014.html>

the cyberbullying may be able to remain anonymous, which makes the bullying difficult to address. Further, the cyberbullying material or content could potentially be viewed by an infinite number of people and it can be difficult for the target to escape, particularly where the content is not removed.

Mr Fletcher MP also highlighted the results of the second study which looked at the reporting of cyberbullying and found that young people most often reported cyberbullying to their families, teachers and friends. The research showed that the severity of the cyberbullying determined how it was dealt with; the instances that were reported to schools were most likely to be dealt with internally by the school, and only a few very serious matters referred to Police. It was also reported that the Police prefer that they are only involved in very serious matters, and they will usually issue warnings, to deal with matters with the least severity appropriate. This prevents the future ramifications that flow from having a Police record from impacting on the lives of young people who have been involved in cyberbullying, unless truly warranted.

## Creating a new offence

There are many conflicting opinions about whether a new criminal offence should be introduced to address cyberbullying. Often the groups that support the creation of a specific criminal offence for cyberbullying are organisations that have formed in response to the experience of a family member or friend who has been the target of cyberbullying. An example of this is the *Chloe's Voice* campaign that was established in response to the suicide of a 15 year old girl who had been the target of bullying and cyberbullying. *Chloe's Voice* is discussed further below.

As mentioned above, the Coalition has commissioned research on cyberbullying and based on this research Mr Fletcher MP suggested that simply creating a cyberbullying offence would be unlikely to have the desired effect of reducing the prevalence of cyberbullying. This is because young people are often not aware of the law and how it relates to their behaviour; young people have less impulse control; and there have been few criminal convictions for cyberbullying under the current laws<sup>15</sup>.

Generally, people within the legal community do not support the introduction of further legislative provisions to address cyberbullying, because they do not believe such criminal repercussions would deter young people from engaging in cyberbullying. Deterrence is only effective where the potential offender is aware of the sanction that would apply if they commit the offence, and then make a rational decision not to commit the prohibited act<sup>16</sup>.

The Law Council of Australia, in their submissions to the Department of Communications in response to the *Enhancing Online Safety for Children Inquiry* stated that they do not support a new Federal cyberbullying offence because there is not sufficient evidence to show a gap

---

<sup>15</sup> Fletcher, P, Parliamentary Secretary to the Minister for Communications. (2014, August). Speech to the National Centre Against Bullying Conference *Beyond the Schoolyard*. Retrieved from <http://www.paulfletcher.com.au/speeches/other-speeches/item/1107-national-centre-against-bullying-conference-wednesday-august-6-2014.html>

<sup>16</sup> Patchin, JW. (2014, August). *Words Wound: Delete Cyberbullying and Make Kindness Go Viral* presentation to the National Centre Against Bullying Conference, *Beyond the Schoolyard*. Retrieved from <http://www.ncab.org.au/Assets/Files/2014%20NCAB%20-%20Justin%20Patchin.pdf>

exists in the current Federal law, nor that the existing offences are not appropriate<sup>17</sup>. The Law Council also raised concerns that if a new offence was introduced it would result in an overlap with existing offences and would have the undesired consequence of bringing more young people into the criminal justice system.

The Australian Federal Police (AFP) also made submissions to the *Enhancing Online Safety for Children Inquiry* and stated that they do not support the creation of a new offence, as they believe that the provision in the Commonwealth Criminal Code, as discussed above, is well suited to prosecutions for cyberbullying<sup>18</sup>. Although the AFP acknowledges that many young people are unaware of how the current legislation applies to cyberbullying, they do not see this as a reason to introduce new offences. The AFP's submission also discussed the way in that the penalties that apply to prosecutions under the current offence can be tailored to the specific circumstances of the case, and that the court is able to access alternative sentencing options for young people, under the State or Territory laws that apply to young people.

Electronic Frontiers Australia (EFA), in their submission to *Enhancing Online Safety for Children Inquiry* stated that it is essential that the focus does not shift disproportionately to the dangers of internet and social media use, because there are many benefits for young people in accessing this technology. EFA stated that they are opposed to the creation of specific cyberbullying offences, as they view cyberbullying as an extension of bullying, which is expressed through a different medium. EFA are strongly opposed to any measures that impact on freedom of speech and are therefore opposed to the introduction of legislation that would compel social media sites or other websites to remove cyberbullying content.

In their submissions, EFA pointed to the jurisdictional issues in terms of social media sites that are based overseas and do not have a physical presence in Australia, and are therefore not subject to Australian law. EFA also highlighted the difficulty of legislating in the context of an industry that is undergoing continual change. EFA agree that there is no simple solution or one program that can act as a 'silver bullet'; they believe that the best approach would combine education programs in schools with parental involvement, so that parents are aware of their children's internet and social media usage<sup>19</sup>.

Therefore, after considering the arguments, YNOT suggests that rather than creating a new offence, the focus should be on strategies that will encourage young people not to engage in cyberbullying, such as the Cybersmart and eSmart Schools programs, which are discussed below. In situations where young people have been involved in serious incidents of cyberbullying, it is preferable that options such as counselling or restorative justice programs are applied, as appropriate in the circumstances. It is YNOT's position that greater clarity, information and education around existing legislation would contribute to a greater

---

<sup>17</sup> Law Council of Australia. (2014, March). *Submission to Department of Communications, Enhancing Online Safety for Children Inquiry*. Retrieved from

[http://www.communications.gov.au/\\_\\_data/assets/pdf\\_file/0009/220221/Law\\_Council\\_of\\_Australia.pdf](http://www.communications.gov.au/__data/assets/pdf_file/0009/220221/Law_Council_of_Australia.pdf)

<sup>18</sup> Australian Federal Police. (2014, March). *Submission to Department of Communications, Enhancing Online Safety for Children Inquiry*. Retrieved from

[http://www.communications.gov.au/\\_\\_data/assets/pdf\\_file/0020/220196/Australian\\_Federal\\_Police.pdf](http://www.communications.gov.au/__data/assets/pdf_file/0020/220196/Australian_Federal_Police.pdf)

<sup>19</sup> Electronic Frontiers Australia. (2014, March). *Submission to Department of Communications, Enhancing Online Safety for Children Inquiry*. Retrieved from

[http://www.communications.gov.au/\\_\\_data/assets/pdf\\_file/0016/220147/Electronic\\_Frontiers\\_Australia.pdf](http://www.communications.gov.au/__data/assets/pdf_file/0016/220147/Electronic_Frontiers_Australia.pdf)

understanding within the community about the ramifications of cyberbullying, and possibly result in more referrals of extreme cyberbullying behaviour to the Police.

YNOT believes it is important that any response takes into account the reasons why the young person has targeted another person through cyberbullying. In addition to addressing the needs of the young person who has been the target, it is vital that the needs of the young person who has engaged in bullying are addressed, as it is important to deal with these issues to prevent the bullying behaviour from reoccurring.

## School programs on cybersafety

Integrating the cybersafety message as part of educational outcomes is common sense, particularly as the use of technology for educational purposes is further integrated into schools. One of the general capabilities under the Australian Curriculum is Information and Communication Technology (ICT) capability, which aims to teach students to take advantage of digital technology while limiting the risks to both themselves and others. In addition to efforts towards cybersafety education in individual schools, there are a number of educational programs available to assist schools to incorporate cybersafety as a priority for the whole school community. YNOT will discuss two national programs; The Australian Communications and Media Authority's (ACMA) Cybersmart program, and the Alannah and Madeline Foundation's eSmart Schools program.

The Cybersmart program focuses on highlighting the educational and social benefits of internet use and aims to educate young people about how they can enjoy these benefits while acting sensibly and protectively to keep themselves safe. The Cybersmart program features tailored materials to educate students, teachers, parents and school library staff about cybersafety and cybersecurity, in addition to resources targeted specifically at educating indigenous people about online safety. The program is centred on a number of principles, including the promotion of the benefits of digital participation to young people<sup>20</sup>, however they do not attempt to address issues that require specialist advice, for example mental health concerns, and instead include referral information so that young people are aware of organisations that can assist them.

The Cybersmart program is research based, and ACMA strives to ensure that the Cybersmart materials they produce are of a consistently high standard and are written in language that is appropriate for their audience. They draw on the research and experience of similar organisations in other jurisdictions and collaborate with organisations that have similar aims to those of Cybersmart.

ACMA also offer the Cybersmart Outreach program<sup>21</sup>, which is a structured program that offers web based training modules and face to face presentations to students, parents and teachers. Cybersmart Outreach is free and features different versions of the program for different groups. For example, the one hour internet safety presentation is tailored to the audience; the content depends on whether they are primary or secondary students, teachers

---

<sup>20</sup> Australian Communications and Media Authority, Cybersmart. (n.d.). *What is Cybersmart? Program Principles*. Retrieved from

<http://www.cybersmart.gov.au/About%20Cybersmart/What%20is%20Cybersmart/Program%20principles.aspx>

<sup>21</sup> Australian Communications and Media Authority, Cybersmart. (n.d.). *What is Outreach?* Retrieved from <http://www.cybersmart.gov.au/Outreach.aspx>

or parents. There are also different presentations offered for pre-service teachers and for professional development. ACMA also host a Cybersmart facebook page<sup>22</sup> which features a web series of “chatterbox” video guides for parents on topical cybersafety issues. The facebook page also hosts articles and other relevant content to promote cybersafety.

The Alannah and Madeline Foundation are delivering the eSmart program in schools across Australia, which is a comprehensive anti-bullying program<sup>23</sup>. The program was developed by the RMIT University School of Education, in collaboration with educational and bullying prevention experts. A pilot program was run in 2010 with great success, and as at January 2014, there were 2000 Australian schools participating in the eSmart Schools program<sup>24</sup>.

The eSmart program engages the whole school community and focuses on developing a positive school culture based on respect and strong relationships, so that bullying is much less likely to occur. Participating schools develop an anti-bullying policy and the implementation of the program into schools is overseen by a committee made up of members from across the school community.

The Alannah and Madeline Foundation believe that to tackle cyberbullying, the behavioural issues that contribute to bullying should be addressed, as cyberbullying is motivated by the same behavioural problems but it is expressed through technology<sup>25</sup>. The eSmart program aims to develop a norm within each school that students use technology safely, respectfully and responsibly.

eSmart Schools educates students, in addition to teachers, parents and the broader school community about utilising the benefits and educational applications of technology, while managing the risks that are associated with technology. eSmart also aims to encourage adults to develop their knowledge of technology to enable them to be a source of advice for children about the dangers that exist.

YNOT supports the implementation of the Cybersmart or eSmart Schools programs into additional Tasmanian schools, and recognises the value in providing consistent information, introducing clear policies on bullying and cyberbullying, and setting a standard of behaviour to encourage the whole school community to play a part in preventing cyberbullying.

**Recommendation Six:** *That school programs such as Cybersmart and eSmart Schools are introduced into all Tasmanian schools, to teach students to be good ‘digital citizens’ by encouraging students to ensure that their online interactions are respectful and that they act responsibly to keep themselves safe online.*

**Recommendation Seven:** *That school policies to address bullying and cyberbullying focus on counselling and the principles of restorative justice rather than zero tolerance approaches that may stigmatise students who have engaged in bullying behaviour.*

---

<sup>22</sup> Australian Media and Communications Authority Cybersmart program facebook page.

<sup>23</sup> eSmart Schools website.

<sup>24</sup> Alannah and Madeline Foundation – eSmart Schools. (n.d.). *About eSmart Schools*. Retrieved from <https://www.esmartschools.org.au/Pages/About.aspx>

<sup>25</sup> Alannah and Madeline Foundation – eSmart Schools. (n.d.). *A behaviour-change system to help schools improve cybersafety and deal with cyberbullying and bullying* [Fact Sheet]. Retrieved from [http://www.amf.org.au/Assets/Files/eSmart\\_brochure\\_webversion.pdf](http://www.amf.org.au/Assets/Files/eSmart_brochure_webversion.pdf)

## Chloe's Voice – Tasmanian perspective

*Chloe's Voice*, formerly known as *Chloe's Law*, is a local campaign established in response to the death of 15 year old Chloe Fergusson in September 2013<sup>26</sup>. Allegedly, Chloe was bullied both verbally and physically over a number of years, and took her own life days after she was physically attacked. The attack was recorded and it was reported that Chloe received threats before her death that the recording would be posted on a social media site. It is understood that an inquest into Chloe's death will be held in January 2015.

Chloe's sister Cassie Whitehill has established a campaign to lobby Government to introduce uniform cyberbullying laws in every Australian State and Territory, and has collected 49,000 signatures in support of her petition. In September 2014, Senator the Hon Eric Abetz tabled the *Chloe's Voice* petition in the Senate, and spoke about the harm that bullying causes to children<sup>27</sup>. At that time, the Coalition Government again confirmed their commitment to introducing a Children's eSafety Commissioner, with legislation to be introduced by the end of 2014<sup>28</sup>.

The example of the cyberbullying as experienced by Chloe Fergusson is extreme, and the alleged bullying and cyberbullying behaviour that Chloe was the target of would potentially satisfy the criminal elements of the existing offences of assault and stalking. It is YNOT's position that there is no merit in introducing new laws unless they will have the intended impact, particularly when existing laws cover cyberbullying behaviour.

It is vital to remember that children are often the people responsible for bullying and cyberbullying behaviour, and depending on their age, they may not be held to the same standards of criminal responsibility as adults. It is essential that any response to bullying and cyberbullying takes into account the needs of the young people involved in bullying, rather than simply writing them off by labelling them as bullies. It is important that early intervention occurs, to give these young people the best possible chance to learn from their past, and move forwards to a positive future. Children and young people's behaviour is an indicator as to what they are feeling and experiencing in their life. Therefore it is important that the reasons why the young person who has been involved in bullying behaviour are addressed, and that the young person is given the tools to modify their behaviour.

YNOT believes that the debate about introducing a new cyberbullying offence should also contemplate the current Police resourcing issues in Tasmania. Any new offence would require training to ensure that Police are able to deal with cyberbullying complaints effectively, and Police may also require additional training in respect of interviewing and interacting with young people.

---

<sup>26</sup> Chloe's Voice website.

<sup>27</sup> Senator Eric Abetz. (2014, September 24). *Chloe's Law Petition to Parliament* [Press release]. Retrieved from <https://abetz.com.au/news/chloe-s-law-petition-to-parliament>

<sup>28</sup> Smith, Matt. (2014, September 7). Senator Eric Abetz pledges action on bullies after receiving 49,000-name petition. *The Mercury*. Retrieved from <http://www.themercury.com.au/news/tasmania/senator-eric-abetz-pledges-action-on-bullies-after-receiving-49000name-petition/story-fnj4f7k1-1227050114149>

## Strategies to address bullying behaviour with the young person responsible for the bullying behaviour

The US Department of Education and Department of Health and Human Services has developed a useful document *Working with Young People Who Bully Others: Tips for Mental Health Professionals*<sup>29</sup>, upon which the following suggestions are based.

The appropriate course of action for addressing the young person's bullying behaviour should be determined by reference to their personality, background and individual issues. For example, if they are experiencing low self esteem, the strategy should work on ways to improve self esteem, while still reinforcing the message that cyberbullying behaviour is not appropriate, and is harmful to the person who is the target of it.

The essential elements of a program to help young people who have bullied should include efforts to:

- Build genuine empathy for other people and promote understanding of the way in which their behaviour can affect others;
- Develop their conscience and the realisation that their actions have consequences; and
- Promote relationships with positive mentors.

Other elements that may be relevant, depending on the individual, are efforts to assist with:

- Anger management;
- Impulse control; and
- Social skills.

Traditional responses to bullying have included mediation or other similar counselling sessions between the young person responsible for the bullying and the young person who is the target of the bullying. However, bullying is not conflict between people who have equal power<sup>30</sup> and therefore mediation may not be appropriate, particularly where it may create the impression that both parties have done something wrong.

## Legislative approaches in other jurisdictions

The United Kingdom (UK) shares a similar position to that of Australia, with no specific laws in the UK that define cyberbullying; however such behaviour is covered by a number of existing offences. The Director of Public Prosecutions has issued a document, *Interim guidelines on prosecuting cases involving communications sent via social media*, which gives guidance as to what elements of a case are required to meet the threshold for prosecution<sup>31</sup>. Depending on the specific behaviour and the offence that the person is charged with, this can be a high standard to meet, because of the need to balance the right of free speech against the need to protect young people.

---

<sup>29</sup> US Department of Education and Department of Health and Human Services. (n.d.). *Working with Young People Who Bully Others: Tips for Mental Health Professionals*. Retrieved from: <http://www.schoolmentalhealth.org/Resources/SBN27.pdf>

<sup>30</sup> stopbullying.gov, U.S. Department of Health & Human Services. (n.d.). *Respond to Bullying – Support the Kids Involved*. Retrieved from <http://www.stopbullying.gov/respond/support-kids-involved/>

<sup>31</sup> Director of Public Prosecutions, Crown Prosecution Service. (n.d.). *Interim guidelines on prosecuting cases involving communications sent via social media*. Retrieved from [http://www.cps.gov.uk/legal/a\\_to\\_c/communications\\_sent\\_via\\_social\\_media/](http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/)

Another parallel with Australia is the awareness, research and conversations that are occurring around cyberbullying, as an increasing issue. The Irish Special Rapporteur on Child Protection, Dr Geoffrey Shannon, has recently spoken out over the need to review the legislation that applies to cyberbullying, which was enacted in 1997 and needs to be updated to reflect changes in technology to enable the law to address the growing problem of cyberbullying effectively<sup>32</sup>. Dr Shannon emphasised the role of schools in preventing and dealing with cyberbullying, and a colleague speaking at the same conference suggested that students should complete education modules about cyberbullying throughout their schooling.

Cyberbullying is also receiving attention as a priority issue at the highest level of international organisations. In 2009 the United Nations (UN) held a seminar *Cyberhate: Danger in Cyberspace – Unlearning Intolerance* and developed four recommendations that should be applied to ensure a coordinated response. The first two aspects focus on public awareness and education to raise awareness of the impacts of cyberbullying. The third measure is family involvement to promote safe and responsible internet use and the fourth is policy development to ensure that social media and online gaming providers make further efforts to improve online safety for young people. The UN's recommendations are positive and are relevant internationally in the effort to reduce and prevent cyberbullying, and its negative effects on the lives of young people.

More recently, in May 2014, the Court of Justice of the European Union handed down a decision, which allows people to request the removal of results that appear when their name is searched in Google. In June, Google began processing the thousands of requests they had already received, which requires them to weigh up the right of privacy of the individual, against the public interest in keeping the information available<sup>33</sup>. Potentially this would allow people who have been the target of cyberbullying to have links removed to the cyberbullying content from searches of their name. This has the potential to lessen the permanency of cyberbullying content, however the decision only applies in Europe and the content may still be accessible when the google search is conducted in a different jurisdiction.

The United States seems to have the most comprehensive response to cyberbullying; all US states with the exception of Montana have introduced legislation relating to bullying between school students, and schools are required to develop policies on bullying. Most states include electronic harassment in their legislation relating to bullying and many include specific references to the term 'cyberbullying'.

Another presenter from the National Centre Against Bullying conference, as mentioned above, was Justin W. Patchin, a researcher from the Cyberbullying Research Center at the University of Wisconsin-Eau Claire. Mr Patchin summarised the Center's research, which found that the introduction of new criminal offences in the US would not be effective, as young people do not have fully developed impulse control and do not rationally weigh up the consequences of decisions before they make them. The Cyberbullying Research Center do not advise that schools adopt 'zero tolerance' policies to bullying because this removes

---

<sup>32</sup>Call for update to laws on cyber bullying. (2014, September 1). *RTÉ News Ireland*. Retrieved from <http://www.rte.ie/news/2014/0901/640662-cyber-bullying/>

<sup>33</sup>Schechner, S. (2014, June 26). Google Starts Removing Search Results Under Europe's 'Right to be Forgotten'. *Wall Street Journal*. Retrieved from <http://online.wsj.com/articles/google-starts-removing-search-results-under-europes-right-to-be-forgotten-1403774023>

discretion to deal with the bullying as appropriate in the circumstances. Instead they recommend that schools implement education programs and encourage students to sign up to a good behaviour agreement in regards to their internet use.

From these other jurisdictions, it seems that few have elected to introduce new, specific cyberbullying offences, however it is clear that cyberbullying is a topical issue that is common to different regions. The experiences and recommendations of the other jurisdictions provide useful insights into what works, and strengthens YNOT's belief in collaboration between government, schools and families as being the ideal way to address cyberbullying.

## Conclusion

In conclusion, cyberbullying has emerged as a significant issue in the lives of young people, and has the potential to cause mental and emotional harm to people who are the target of cyberbullying behaviour. Cyberbullying is a complex problem that cannot be addressed effectively without coordinated action. There are no simple solutions to preventing and dealing with cyberbullying, nor does any single organisation or individual have responsibility for this task alone. Given this context, YNOT does not believe that introducing a new cyberbullying offence is appropriate, given that there are already offences that apply to cyberbullying behaviour. YNOT believes the best school education programs include information about cyberbullying, promote a positive school culture and encourage respectful behaviours online. Where cyberbullying has occurred, early intervention is important and the school and family of the young person who has engaged in cyberbullying should work together to assist the young person to help them learn and move forward from cyberbullying. It is vital that the young person who has been the target of the cyberbullying is given emotional support to get through this difficult period.

To reduce cyberbullying, Australia will benefit from the Federal Government's plans to establish a Children's eSafety Commissioner, which will send a clear message that cyberbullying is a serious concern and will coordinate the cyberbullying information that is provided to schools and parents, and liaise with internet service providers and social media sites to facilitate the rapid removal of cyberbullying content. In addition to this, continued efforts by schools to educate students about their rights and responsibilities online, in addition to creating a caring and respectful school environment, will contribute to preventing bullying from occurring in the future. To round out these efforts, the role of parents and families in teaching their children to respect and treat their peers and classmates well is invaluable. Parents and families would also benefit from access to more information about how to speak with their children about cyberbullying, and strategies for helping to keep their children safe when online.