

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

Clauses and Explanatory Notes.

Introduction

The proposed amendments seek to provide for the confiscation of electronic devices used to record or transmit images of bullying against children (cyber bullying).

Bullying is an increasing problem in our schools. A new form of bullying is occurring due to technological development and availability – using devices as a mechanism for bullying, or ‘cyberbullying’, which can often take the form of staging violent events for the purposes of filming and distributing. An estimated 1 in 10 school children are victims of cyberbullying. The images are forwarded through electronic technology: mobile phones, computers and social networking internet sites. Because of the use of technology, this type of bullying is not exclusive to school grounds, but pervades home life as well. Reports of some recent suicides of young people have cited cyberbullying as a contributory factor.

Short Title of the Bill

The short title of the Bill is the *Criminal Code (Filming or Possessing Images of Violence Against Schoolchildren) Amendment Bill 2010*.

Objectives of the Bill

- To provide protection for children who are the targets of cyberbullying through the confiscation of devices used by bullies. Because the aim of cyberbullying is the capture of the image of bullying, the confiscation of the device effectively stops the mode and the intent of the offence.
- To create a new section of the Criminal Code to specifically deal with making, possessing and distributing schoolchild bullying material
- To provide a framework for the forfeiture and seizure of things used to make, distribute or store schoolchild bullying material.

Reasons for the Bill

- To confiscate the tools used in cyberbullying
- To protect the victims of cyberbullying

Achieving the Objectives

Increasing the powers of school principals and teachers is an immediate and effective way to deal with instances of bullying. This is strengthened by the requirement to hand over seized devices to the police. Police powers for seizure extend to any venue.

Fundamental Legislative Principles

While the amendments allow the forfeiture and seizure of property, this is done to ensure the safety and dignity of children who are targets of bullying.

Cost to Government

It is not envisaged there will be a significant cost associated with the implementation of this Bill.

Consultation

Representatives within the education sector have been consulted on this Bill.

Clause 1 – The short title of the Bill is the *Criminal Code (Filming or Possessing Images of Violence Against Schoolchildren) Amendment Act 2010*.

Clause 2 – This clause states that the Bill amends the Criminal Code.

Clause 3 – This clause inserts a new section, Chapter 22AA, *Filming or possessing images of violence against children*.

The new s 229BA contains definitions for the Bill:

Bullying is defined as an act of physical violence, or physical or verbal intimidation or abuse against a person that a reasonable adult would consider both unreasonable conduct and could cause the person embarrassment, humiliation or other distress if visually recorded.

Schoolchild covers children enrolled in either State or non-State schools within the meaning of the Education (General Provisions) Act 2006.

Schoolchild Bullying Material excludes from its definition material covered under child exploitation clauses in section 207A, but includes material that describes or depicts someone who is (or apparently is) a schoolchild under 16 years being subjected to bullying, in a way that is likely to cause offence.

The new s 229BB, 'Involving child in making schoolchild bullying material', creates a new crime of involving or attempting to involve a child in any way in the making of bullying material. This is punishable by up to 5 years imprisonment or 40 penalty units if committed by an adult, or 1 year's imprisonment or 8 penalty units if committed by a child.

The new s 229BC, 'Making schoolchild bullying material', creates a new offence of making or attempting to make schoolchild bullying material. The same penalties apply as per Involving a child in making schoolchild bullying material.

The new s 229BD, 'Distributing schoolchild bullying material', creates a new crime for communicating, exhibiting, sending, supplying or transmitting schoolchild bullying material, attempting to do so, making the material accessible by someone, or entering into an agreement to distribute the material. This offence also has a penalty of 5 years' imprisonment or 40 units for adults, and 1 year's imprisonment or 8 units for children.

A further new offence is created in s 229BE, 'Possessing schoolchild bullying material', with lower penalties (2 years' imprisonment or 16 penalty units for adults, 6 months' imprisonment or 4 penalty units for children) for a person who knowingly possesses schoolchild bullying material.

Defences for all these offences are covered in s 229BF, which allows a defence on the grounds of recording, storing or distributing the material for 'a genuine artistic, educational, legal, medical, scientific or public benefit purpose' where the conduct in doing so was reasonable. An example is given for public benefit purposes of a current affairs television program showing children being subjected to bullying.

Section 229BG covers the forfeiture of the things used to make, distribute or possess bullying material. Examples of the thing include a computer, camera, mobile phone, sound recording device or video recorder. A court may order the forfeiture of an image or material that is the subject of the offence whether or not the person is convicted of the offence. If convicted, the thing used to commit the offence is also subject to forfeiture to the court. This forfeiture is applicable regardless of whether the thing has been seized or is still in the owner's possession.

Section 229BH deals with the seizure of items. Under this section, a police officer who reasonably believes a device has just been or is being used to commit an offence, may seize the thing. Within school boundaries, a school principal or teacher may seize the device in the same belief.

A teacher seizing a device must give it to the principal. A principal must give the device to the police if the principal considers it appropriate to do so. If the principal does not hand the device to the police, the principal must return the device to the person from whom it was seized.

Seizure of a device must be accompanied by the issue of a receipt by the next working day after seizure, describing the device, if requested.

If a seized device is no longer believed by the police to have been used to commit the offence, it must be returned to the person from who it was seized by the next business day.

Under this section, a school principal is defined as, in the absence of a named position, the person responsible for the day-to-day management of the school. A teacher is a person undertaking duties in a school, including undertaking an educational program, assessing student participation in an educational program, or otherwise administering an educational program, and includes a teacher's aide.