



Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Wednesday, 15 September 2010

CRIMINAL CODE (FILMING OR POSSESSING IMAGES OF VIOLENCE AGAINST SCHOOLCHILDREN) AMENDMENT BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (7.35 pm): On 10 March 2010, the member for Moggill introduced into parliament as a private member's bill the Criminal Code (Filming or Possessing Images of Violence Against Schoolchildren) Amendment Bill 2010. I rise tonight to oppose this bill.

Let there be no doubt: bullying is a scourge, having serious impacts upon the happiness, wellbeing and security of individuals in our community, most particularly young Queenslanders. It is an act most often of cowardice, insecurity and incredibly poor judgement. Regrettably and sadly, it is not a new behaviour.

Cyberbullying may use more sophisticated methods to victimise others, but let us not glorify it as being sophisticated behaviour. It is bullying that uses new technology to perpetrate petty acts of cowardice via email, mobile phone texting and photography and online chat rooms or social networking sites. It is also important to understand who are the most likely perpetrators and victims of this form of bullying behaviour, namely, school students and other young people.

Student bullying has been recognised by governments, schools and communities worldwide as a major problem for schools. Bullying may have far-reaching effects, with studies showing that not only does it have an immediate impact on a child but also its effects can be felt long term, with some victims more likely to develop mental health problems in adult life.

Those carrying out the bullying tend to be more clinically depressed and suicidal than others and more inclined to act aggressively towards others both at school and beyond. These effects are set out in the most recent research on school bullying, *Applying the method of shared concern in Australian schools*, a report by the University of South Australia, commissioned by the federal government and released by the then Deputy Prime Minister and Minister for Education and now Prime Minister, Julia Gillard, on 18 January 2010.

Cyberbullying can be a particularly pervasive form of bullying. With traditional forms of bullying, a victim could generally escape their tormenters at the end of the day. Harassment through electronic communications, however, can follow a child into their home.

This parliament is unanimous in condemning bullying, but the debate tonight is not about condemnation of these spineless acts. That is taken as agreed. The bill tonight proposes a mechanism that may do little to prevent bullying and, instead, may result in the criminalisation of schoolchildren—with all its consequences—including the possible limitation of future employment and other future opportunities.

This bill replaced the Criminal Code (Filming or Possessing Images of Violence Against Children) Amendment Bill 2009, which the member for Moggill introduced into the parliament on 28 October 2009 and which the honourable member subsequently withdrew. That earlier bill proposed to expand the child exploitation material offences, currently in the Criminal Code, to also cover bullying. Those offences were introduced by the Labor government in 2005 to assist in combating the making, distribution and possession of child pornography. By inappropriately applying those offences to bullying by schoolchildren,

that bill devalued and diminished the nature of the criminality involved in making and distributing child pornographic material by and for paedophiles. That bill was so poorly conceived and drafted that the member for Moggill had no alternative but to withdraw it.

While this replacement bill does not suffer the same manifest defects, it remains an inapt tool to actually address cyberbullying in our community. Rather than expanding the child exploitation material offences, the bill mirrors the format of those offences and applies them to schoolchild bullying material. However, simply copying that format creates a number of problems, since those offences were drafted to deal with a very different type of behaviour. I will confine my speech to two aspects of the bill that I find to be particularly problematic.

The child exploitation material offences deal with visual images—that is, the photography or filming of children. By copying these offences the bill restricts its operation to visual images of bullying. To be an act of bullying, the act must be ‘physical violence, or physical or verbal intimidation or abuse’ that is unreasonable conduct and which could cause ‘embarrassment, humiliation or other distress if visually recorded’. This approach excludes a great variety of methods of cyberbullying. Text messages, emails and messages posted online may not be captured as offences, particularly where the words themselves are not inherently intimidating or abusive. This misconception of the broad nature of cyberbullying is clear from the explanatory notes, which state in part that ‘the aim of cyberbullying is the capture of the image of bullying’. The bill may meet its aim as set out in the explanatory notes and the member’s second reading speech in that it captures images of bullying, but it falls short of dealing with cyberbullying generally.

A further deficiency inherent in the bill is the definition of the term ‘schoolchild’. A ‘schoolchild’ is defined as a child who is enrolled to attend a school, and ‘schoolchild bullying material’ is defined as material depicting a schoolchild under 16 years. As a result, the provisions of the bill will not apply in respect of all enrolled students. A significant number of students in senior year level and no mature age students would be captured. This is a serious oversight in the drafting of the definition, particularly as cyberbullying rates are much higher among secondary students compared to primary school students.

Directly criminalising bullying behaviour, which can run the gamut from snide remarks to childish taunts to deliberate social ostracisation, at this time is not the answer in my view. In the report commissioned by the federal government, to which I referred earlier, the recommendation was for a non-punitive method of dealing with bullying aimed at empowering students to act to resolve the situation. It should be recognised, of course, that bullying can escalate into more serious, potentially threatening or violent behaviour. Where this occurs, it is always open to principals, parents or any concerned person to contact police if they believe that an offender’s behaviour may constitute a criminal offence.

It is important to note that the current law contains a range of offences—both under Commonwealth and Queensland legislation—that cover behaviour that may constitute bullying. It is worth noting a number of these offences to remind the broader community, the member for Moggill and all members of this House that, if their constituents experience behaviour that may constitute an offence, they should feel empowered to take action and report it immediately to appropriate officers.

Under the Commonwealth Criminal Code, sections 474.15 and 474.17 include offences of using a carriage service to make a threat and using a carriage service to menace, harass or cause offence. These provisions have been used to successfully prosecute individuals—for example, in Queensland where an individual sent harassing text messages, and in Victoria where a man sent an indecent film of himself using a mobile phone.

In Queensland, the offence of stalking, which is section 359E of the Criminal Code, includes both contacting a person in any way—including, for example, by telephone, mail, fax, email or through the use of any technology—and committing an intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence. Only recently a man was convicted of stalking in Victoria in what was described in the *Australian* as ‘a landmark prosecution of cyberbullying’. The tragic case involved a 21-year-old man sending threatening text messages and a MySpace message to a 17-year-old former friend just days before the recipient of the messages jumped to his death from Melbourne’s Westgate Bridge.

Further offences in the Criminal Code are applicable to the behaviour constituting bullying—in person—or filming bullying. Firstly, there is threatening violence under section 75 of the Queensland Criminal Code. This offence includes the doing of any act that is likely to cause any person in the vicinity to fear bodily harm to any person or damage to property. Secondly, there is common assault under section 335 of the Queensland Criminal Code. Under that section, any person who unlawfully assaults another is guilty of common assault. Thirdly, if the assault is serious then a person could be charged with assault occasioning bodily harm under section 339 of the Queensland Criminal Code, or grievous bodily harm pursuant to section 320 of the Queensland Criminal Code.

Finally, it is worth noting that the ‘party’ provisions in section 7 of the Queensland Criminal Code may have application. Under section 7(1)(c), a person who aids another person in committing an offence is deemed to have committed the offence. A child filming a schoolyard assault may be liable to conviction for

assault by virtue of encouragement of the assault through their presence. Under section 7(1)(d), a person who counsels or procures another to commit an offence is deemed to have committed the offence. If a child arranges for an assault to occur in order to film it—this is referenced in the explanatory notes to the Bill as ‘staging violent events for the purposes of filming and distributing’—then that child may be liable to conviction for assault through advising, urging or soliciting the offence.

However, direct criminalisation of possession of such an image by a schoolchild—punishable by imprisonment of up to six months for a child or two years imprisonment for an adult—is not appropriate, particularly given the approaches suggested by recent research that punishment is not the answer to bullying. This level of behaviour would be more appropriately dealt with at the school level.

The government recognises that bullying, including cyberbullying, is a serious problem for schools. However, this bill is inadequate and flawed. Very little of the concerning behaviour would be captured by this bill. On the contrary, I have concerns about directly criminalising this behaviour by schoolchildren and, as noted, there are already a number of existing potentially applicable offences. I am, therefore, not persuaded at this time that this amendment to the Criminal Code is desirable or necessary.

The government will, of course, fully consider the recommendations of the Standing Committee of Attorneys-General National Cybercrime Working Group concerning nationally consistent laws on cyberbullying. I also wish to draw to this parliament’s attention the decision of the Standing Committee of Attorneys-General of 7 May 2010 to request the Model Criminal Law Officers Committee to consider whether it is desirable to develop nationally consistent laws dealing with the use of the internet to threaten, menace, harass or cause offence, such as in serious cases of cyberbullying. That decision concerns cyberbullying generally, not just with respect to schoolchildren. This work will now in fact be undertaken by the SCAG National Cybercrime Working Group. Attorneys-General will consider the recommendations of that working group in due course. That is the appropriate way to proceed in carefully determining how nationally consistent criminal laws should be developed in this difficult and complex area.

The bill may be an improvement on its badly drafted, poorly conceived and hastily replaced predecessor, but adding very little to nothing still leaves us with very little. This bill does not address the reality of cyberbullying. It ignores the current range of criminal offences and it ignores the most recent social science research into how best to respond to cyberbullying. For these reasons, the government opposes the bill.