



Speech by
Grace Grace

MEMBER FOR BRISBANE CENTRAL

Hansard Wednesday, 15 September 2010

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

Ms GRACE (Brisbane Central—ALP) (8.58 pm): This bill was introduced by the member for Moggill on 10 March 2010 after he withdrew the ill-fated and poorly conceived Criminal Code (Filming or Possessing Images of Violence Against Children) Amendment Bill 2009. The defects in that previous bill have been pointed out by the honourable the Attorney, and I do not intend to recanvass those matters. I indicate at the outset that I intend to oppose this bill.

This debate tonight is not about bullying or cyberbullying in particular. This House I think uniformly condemns such behaviour. It is unacceptable and, particularly for schoolchildren, the effects can be devastating and long term. I have a 16-year-old and we talk frequently about bullying and cyberbullying.

This debate is about the inadequacy of the opposition's bill, the fact it will do nothing to stop bullying or cyberbullying and the fact that it will place children in contact with the criminal justice system when they actually need assistance and guidance. Cyberbullying is much wider than the conduct which is captured by this bill.

To be in breach of this proposed offence, a person must involve a child in the making of bullying material. The bill states—

Bullying means an act of physical violence, or physical or verbal intimidation or abuse against a person that a reasonable adult would consider—

- (a) is unreasonable conduct; and
- (b) could cause the person embarrassment, humiliation or other distress if visually recorded.

We all know that bullying is much more than that. Cyberbullying, using text messages, email or social networks will not be captured by this bill unless they include some visual recording of bullying behaviour.

There are currently extensive laws in Queensland that capture bullying behaviour. When combined with Commonwealth offences, the suite of offences available to prosecuting authorities more than adequately covers the field of bullying and cyberbullying. For example, Des Butler, Sally Kift and Marilyn Johnson from QUT have written an excellent article titled *Cyber bullying in schools and the law: Is there an effective means of addressing the power imbalance?* In this article, they outlined the existing laws which capture bullying behaviour.

The Commonwealth Criminal Code Act 1995 contains a number of offences which may be an effective means of redress against a cyberbully who misuses telecommunications services to menace, threaten or hoax other persons. Section 474.17 makes it an offence to use telecommunication services such as a telephone, mobile phone, email or internet sites to menace, harass or cause offence. It is punishable by three years. Where the threat goes further and contains a threat to kill or cause harm, an offence under section 474.15 may be committed. This section provides that it is an offence for a person to use telecommunication services, including the internet, to threaten to kill—punishable by 10 years imprisonment—or to cause serious harm—punishable by seven years—to another person such as a target or to a third person. Additional offences in the Criminal Code Act 1995 (Cth) that may be relevant to

cyberbullying include section 474.16, which makes it an offence for a person to send a hoax communication intending to induce a false belief that an explosion has been left somewhere—punishable by 10 years imprisonment—and section 474.22, which prohibits using a carriage service for child abuse material. This section may catch offenders posting videos of sexual assault and other abuse like the incongruously named ‘happy slapping’ in which a victim is assaulted while an accomplice films the attack, often with a mobile phone and distributes the video via a website.

The Queensland Criminal Code also provides offences of threatening violence in section 75 and also threats in section 359, which may cover some bullying behaviour including cyberbullying. In British Columbia a number of bullies were successfully prosecuted after making threats to a year 9 classmate who later committed suicide, leaving a note attributing her actions to relentless bullying. The bullying included telephone calls and making threats such as, ‘I’m going to beat you up,’ and, ‘You’re dead.’

The offence of unlawful stalking was also inserted into the Criminal Code and covers much conduct that would constitute bullying. This law is drafted widely and includes contacting a person in any way including, for example, by telephone, mail, fax, email or through the use of any technology. Their behaviour needs to make a person fear violence or property damage or cause some detriment. Detriment is defined to include apprehension or fear of violence and serious mental, psychological and emotional harm. The upskirting offence contained in the Criminal Code also covers much behaviour which might constitute cyberbullying. It might also include some of the conduct the subject of this bill.

An analysis of the laws already in existence in Queensland shows that the law is already adequate to cover the conduct which constitutes cyberbullying. The offence created by this bill covers such a small amount of the conduct that I fail to see how it can achieve the lofty objective of providing protection for children who are the targets of cyberbullying as contained in the explanatory notes. It really is a lofty suggestion.

The other aspect of the bill which causes concern is the seizure power. Police already have power to seize evidence of an offence. If any technology is used in the commission of an existing offence, police can seize that equipment as part of the investigation. For the reasons I have already outlined, this power is already much wider than the power purported to be given by this bill. The severe limitation of the bill to ‘visual images of bullying’ means that much conduct will not be covered. So this bill gives no wider powers to police than already exist.

School teachers and principals in Queensland have also always had power to confiscate student property to ensure the safety of students and to create a supportive and safe learning environment for students. That is why the government clarified the situation earlier this year in the Education (General Provisions) Regulation 2006.

This bill provides no greater protection to students nor any greater power to police or teachers than already exist at law in Queensland. It is a smokescreen. It adds nothing. It is actually a waste of space. As is the usual practice of the opposition, it introduces private members’ bills to cover defects in legislation that do not actually exist. It is an attempt to clutter the statute books with laws that are unnecessary, poorly conceived and do nothing to enhance the protection of Queenslanders or the people they purport to try to protect. They do have great names though. I have to admit that the Criminal Code (Filming or Possessing Images of Violence Against Schoolchildren) Amendment Bill 2010 is a great name for a bill. It is unfortunate that it lacks in substance what it has in creative use of a name. I have great pleasure in opposing a bill that is totally and absolutely ‘de-necessary’.