



YNOT Submission to the Tasmanian Law Reform Institute Issues Paper on Bullying

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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.



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INTRODUCTION

The Youth Network of Tasmania (YNOT) is the peak body for the youth sector and young people aged 12 – 25 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 their behalf. YNOT welcomes this opportunity to provide a submission to the Tasmanian Law Reform Institute (TLRI) in response to the issues discussed in the *Bullying Issues Paper*.

Through Tasmanian Youth Forum consultations with young people in Tasmania, the issue of bullying, including cyberbullying, has regularly been flagged as a priority issue impacting upon their wellbeing. YNOT has already produced a number of submissions that relate to this issue. These include the *Review of the Education Act* (YNOT: 2014) (Appendix 1), *Cyberbullying and Tasmanian Young People* (YNOT: 2014) (Appendix 2), *Personal Searches of Young People: In Custody and in Custodial Premises* (YNOT: 2103) (Appendix 3), *Statewide Forum on Study and Stress Communiqué* (YNOT: 2012) (Appendix 4).

YNOT understands the difficulty in defining bullying within a legal context, as comprehensively discussed within the TLRI *Bullying Issues Paper*. We also recognise the complexity of the nature of bullying in relation to young people, as perceptions of what constitutes bullying can be distorted, misinterpreted or even go unidentified. Complications increase when it is understood that around 20% of bullied children have been identified as bully-victims, that is, they have both bullied students and have been bullied and can act in provocative ways towards their attackers (Rigby: 2015).

Within this submission, YNOT presents the position that in many cases, the circumstances surrounding the behaviour of young people who engage in bullying is embedded in a complex array of social, behavioural, emotional and psychological contexts. YNOT supports a response towards bullying that is based within a restorative justice and human rights framework. As a result, YNOT advocates approaches to dealing with bullying among young people that understand the potential short and long-term impacts that can result from engaging in bullying behaviour, and work towards reducing these.

QUESTION 1: Do you think that the current legal frameworks available to address bullying are adequate? Why or why not?

While no specific law addressing bullying exists within Tasmania, YNOT does not support a change to current laws when dealing with young people involved in bullying. YNOT believes however, that in the case of young people, many of these laws and how they apply to the lives of young people are difficult to understand for young people and their parents, guardians or carers. YNOT believes that to improve the current laws the focus needs to be on how to apply and utilise these laws, rather than focusing solely on the question of adequacy of the laws.

As addressed in our previous submission to the Tasmanian Government, *Personal Searches of Young People: In Custody and in Custodial Premises* (YNOT: 2103), YNOT believes that there are very real gaps in the knowledge of young people regarding the law and their rights. Consequently, YNOT supports the State Government placing emphasis on providing accessible education and information to young people, families, care-givers and the community in easy to understand language.

YNOT recognises the severity and possible long-term implications of bringing a young person into contact with the court system and the potential criminal repercussions flowing from this. As a result, YNOT supports a restorative justice approach in dealing with young people who engage in bullying behaviour. The *Youth Justice Act 1997* (Tas) (covering young people aged 10 – 18), currently provides recourse for police to deal with an alleged offender from a position of encouraging responsibility and restitution, without immediately thrusting the young person into the court system.

The educative and restorative approach taken by the *Youth Justice Act 1997* was discussed in the media following the push for the implementation of Chloe's Law in Tasmania from members of the community. Points discussed included the opinion that the Act is appropriate for dealing with bullies, and aligns well with many anti-bullying policies that schools state-wide have in place, however, these processes described in the Act are not well known or not being implemented (Baker: 2014).

YNOT recommends that provision be made for schools to be formally educated on the legal jurisdictions under which bullying behaviour falls, ensuring that they have a clear understanding of how this impacts upon their policies and procedures surrounding bullying and ensuring that this is clearly communicated to staff, students, parents and community members, all in accessible and relevant ways. The consideration of format and language, ensuring it is simple and clear is essential for accessibility. This educative element could

also be extended to community and government organisations working with young people, including youth workers and social workers.

Evidence strongly indicates that young people who engage in bullying at school have a significant risk of antisocial, criminal and poor health outcomes later in life, and some may have additional mental health issues. The Child Family Community Australia Paper, *'Children who Bully at School'* (Lodge: 2014) provides insight into the background and future risks of these children. It outlines that these young people are in need of support to change their behaviour and that early and effective intervention may be able to decrease the risk of the progression into adverse life outcomes.

QUESTION 2: Do you think that legislation reform is necessary to address the problem of bullying?

As expressed in Question One, YNOT believes that legislative reform which takes a punitive approach to bullying is not the most effective method of intervention for young people.

YNOT recognises that bullying amongst young people has long-term implications, not only on those who identify as victims of bullying, but also for those young people who bully others.

YNOT believes that legislative reform will not effectively change the bullying behaviour it is designed to target. Alternatively, YNOT supports working with young people, parents, carers, schools, police and key stakeholders towards a cultural and behaviour shift in understanding what bullying is, its impacts, current legal consequences and suitable avenues to deal with bullying when it does occur.

QUESTION 7: Do you think a criminal response to bullying is appropriate?

YNOT is committed to seeing positive outcomes for all Tasmanian young people through means which build resilience, embrace responsibility, build upon strengths and encourage help seeking behaviour.

Therefore, YNOT believes that a criminal response is not appropriate for young people involved in bullying behaviour, but is highly supportive of early interventions and preventions with the goals of reducing both the bullying behaviour and long-term health and social outcomes.

The following points outline the reasons YNOT is against implementing a criminal response to bullying involving young people:

Co-morbidity with other issues

Bullying behaviour is linked to possible behavioural, emotional, social or psychological problems within the young person, and a common co-morbidity between bullying and other childhood disorders is also identified (Lodge: 2104).

Problems into adulthood

The Australian Institute of Family Studies (2014) states that the incidence of depression among these young people later in life is 30% higher than in their peers. A number of other disorders and behaviours are also associated with childhood bullying, such as bipolar disorder and alcohol, nicotine and marijuana use. It is also acknowledged as a significant predictor for anti-social behaviour and criminal offending (Lodge: 2014).

Complexities of bullying

The issue of bullying amongst young people is a complex one, as it has been shown that a significant number of young people who bully have previously been victims of bullying themselves. In addition to this, around 20% of bullied young people can be identified as bully-victims (those who both engage in bullying and are victims of bullying, and can often provoke their attackers) (Rigby: 2015).

Physiological and psychological understanding of the development of the adolescent brain demonstrates that the region of the brain that controls reasoning and helps a person to think before they act, and consider the consequences of their actions, is still developing well into adulthood (American Academy of Child & Adolescent Psychiatry: 2011).

A 2008 study found that amongst 40 countries surveyed, Australian primary schools were amongst those with the highest reported incidence of bullying (Lodge: 2014). The prevalence of bullying is not the same between countries, with vast differences having been documented. This indicates that there are preventative measures which exist within a society to reduce its occurrence (Rigby: 2015), and points to a responsibility to investigate and address the relevance of these to an Australian context.

Effects of a criminal response

Applying a criminal response to young people carries the danger of creating a new subset of young offenders and exposing a wider group of young people to the legal system than would otherwise come into contact with it (TLRI). In addition, applying criminal convictions to young people, for a behaviour which can be addressed in proactive and restorative ways, can have detrimental effects on their future ability to secure work, as well as being stigmatising.

A criminal response may appease community voices which seek to implement punitive measures regarding bullying, however, these short-term solutions do not address the underlying causes and are often tokenistic and ineffective in achieving long-term behavioural change. If a criminal response is taken, it must be in conjunction with other responses which support the underlying social, emotional, behavioural or psychological issues in the young person's life (TLRI).

Punishing the offender is shown not to be the most effective way to stopping the bullying behaviour (Thompson and Smith: 2011). Lodge (2014) outlines a number of bullying interventions which have been shown to work in reducing incidents of bullying and also act to protect children who engage in bullying from later criminal offending.

The provisions made within the *Youth Justices Act 1997*, support finding alternative avenues for dealing with young people engaging in anti-social behaviour as opposed to exposing them to the court system too quickly. YNOT recommends, however, that Police be trained and equipped with relevant information, programs and restorative options that particularly pertain to bullying and are demonstrated as being effective.

Question 18: Do you think that schools should be legally required to have anti-bullying policies and procedures? Why or why not?

Whilst the current *Learner Wellbeing and Behaviour Policy* (Department of Education, Tasmania: 2012) is directive in ensuring school environments are safe, supportive and free from bullying, YNOT supports the mandatory requirement for schools to have specific bullying prevention, investigation and resolution procedures in place.

This would be legally compatible with Duty of Care requirements which fall under Common Law, and which allow for the legal contestation of school's failure to prevent bullying. Butler (2006) identifies the pursuit of legal means to challenge schools in their failure to carry out their Duty of Care obligations as a growing area.

It has been reported that many school policies do not meet quality standards, despite research saying that good policies, well implemented, do make a difference. One common area of lack identified was policies not being developed in collaboration with parents and students, and another being procedures either not being clear or not being followed (Gregg-Carr quoted by Topsfield: 2014).

The link between bullying behaviour and later offending has already been presented in this response, however, it is helpful to consider the research of Ttofi, Farrington and Lösel (2012), as referred to by Rigby (2015), which describes the implementation of effective anti-bullying programs as being a form of early crime prevention.

Questions 19 – 21

YNOT is interested and thankful for the opportunity to express our perspective on the issue of bullying policy and procedures as relating to schools. In order to avoid repetition, YNOT's response to Questions 19 to 21 will be incorporated into one response.

Minimum standards

YNOT is supportive of policies that prescriptively stipulate the minimum standards for schools in relation to investigative and disciplinary measures. YNOT does advocate however, that for this to happen, it must be within the context of adequate resources, support and training.

Policy development and implementation

YNOT recommends that the process of policy development be recognised as a crucial element in the development of effective policy. We believe that a collaborative approach in which all relevant stakeholders are included in the development process is very important. Rigby (2015) states that a lack of informed agreement among members of the school community means the implementation of an anti-bullying policy is likely to be weak and ineffective. He also suggests the approved policy is made accessible to the whole school community.

YNOT believes that schools need support through training and funding to implement research-based strategies that bring a genuine sense of justice and empowerment, and support growth and resilience for children being bullied, but equally recognise the risks and vulnerabilities attached to those children who bully and seek restorative measures that can lead to changes in behaviour in these children.

The Australian Institute of Family Studies (2014) indicates that teacher responsiveness is fundamental in reducing school bullying. Their analysis affirmed the need for increased training of teachers and parents, particularly around ensuring bullying interventions are effectively targeted to those children most at risk of bullying victimisation. They also suggested that parents may need help in recognising if their child has been bullied and how they can help their child.

Rigby (2002) advocates for the need to begin anti-bullying intervention early, having strategies to help children protect themselves from those who bully and a focus on discouraging the behaviour of students who engage in bullying. While well developed and effective intervention procedures need to be incorporated within anti-bullying policy, YNOT

support a strong focus on preventative measures, rather than a dependence upon reactive approaches.

Other states

The NSW Department of Education (2014), who mandates that all schools implement an Anti-bullying Plan, provides guidelines and template documents to support schools in developing, documenting and implementing their plan. The ACT Department of Education and Training (2007) has a mandatory anti-bullying policy in place which stipulates schools must include specific strategies for reporting, intervening, accessing help and support and professional learning. The Victorian Education Department has been identified as having the best bullying and cyberbullying resources in Australia, with their Bully Stoppers and eSmart programs (Topsfield: 2014). YNOT has previously expressed support for the implementation of whole school approaches such as eSmart in the research paper, *Cyberbullying and Young Tasmanians* (YNOT: 2014) (Appendix 2).

Engaging parents

Numerous studies and papers acknowledge the importance of involving parents in the process of dealing with bullying in schools (Lodge: 2014, Ttofi, M. & Farrington, P.: 2010). YNOT suggests that this area be further explored and schools supported to have strategies engaging parents and carers of young people who have been identified as engaging in bullying behaviour.

Implementation within schools

While supporting the implementation of standards for anti-bullying policies and procedures, YNOT acknowledges the huge amount of demands that are already upon school administrations and teachers. YNOT also understands that funding to create new resources is limited and encourages creative thinking in the utilisation and diversification of current roles and resources. For effective anti-bullying policies to be implemented, schools do need to be adequately supported and resourced through the development, implementation and evaluation of these policies. YNOT sees opportunities for the use of current resources already available to schools, such as through the federally-funded school youth workers and chaplain program, or the utilisation of the Youth Health Nurses who are being introduced to many schools across the State. Alternatively, a suggestion is for development of an additional role within schools such as a Welfare Head Teacher, which has been used in some NSW schools, who would oversee the implementation of anti-bullying procedures at a student level. There may also be scope for other support agencies, such as family support workers, the PCYC youth workers or police officers, social workers and youth workers to be

engaged with schools. YNOT also offers the suggestion of some resourcing from the State Government's work in the youth mental health area to be channeled into anti-bullying strategies.

YNOT believes that the process of how any policy is implemented is critical to its success. This means that within each school, all levels of staff need to know what the policies are and how to implement them. Students also need to know what constitutes bullying and what to do and who to go to in cases of bullying. YNOT suggests scope for student leadership bodies, or other student groups to be active in the promotion of how the policy pertains to students. YNOT supports whole school preventative strategies that target the culture within the school as well as dealing proactively with bullying behaviour and strengthening the resilience of all students.

Under the current *Education Act 1994 (Tas)* principals have the authority to suspend students who have behaved in a manner deemed to be unacceptable, which may include bullying behaviours towards others. While this may be a necessary disciplinary strategy in certain cases, YNOT believes that in many instances, but particularly in regards to bullying, this provision needs to incorporate restorative measures, as reflected in the *Youth Justice Act 1997*. YNOT believes that if a young person is suspended for bullying behaviour, school policies and procedures need to incorporate appropriate re-integration programs or processes that are more than tokenistic and address the causes of the behaviour.

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