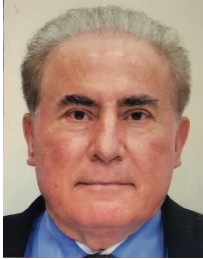


Cyberbullying Laws in Australia

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Cyberbullying is emerging as a significant legal issue of growing national and international importance. In today's digital age, the once distinct borders separating domestic and international communication, are quickly eroding away. Technology has led to the creation of new forums for communication where little remains in the private sphere.

It is important for legal practitioners and service providers across the globe to be aware of the relevant law prohibiting cyberbullying and the serious legal and non-legal ramifications to best advise their clients who have been, or may become, impacted by these issues.

The following discussion outlines the:

- A. Relevant law in Australia (NSW and Commonwealth) that prohibits cyberbullying and;
- B. Various legal and non-legal courses of action individuals can take if they are victims of cyberbullying.

A. Relevant Law:

Although cyberbullying does not constitute a distinct offence under Australian legislation, in general, the use of mobile phones, email or social networking sites to harass or abuse a certain person or group of people can constitute a criminal offence when characterised as:

1. Using the internet or a device to threaten, harass or offend another person
2. Stalking
3. Intimidating or threatening conduct

4. Inciting or counselling a person to commit suicide
5. Defamation
6. Accessing online accounts without authorisation

1. Menacing, harassing or offensive use of the internet or a device

Section 474.17 of the *Criminal Code Act 1995* (Commonwealth) criminalises the use of a phone or the internet to threaten, harass or seriously offend somebody. A message or post could be considered offensive if it is likely to cause serious anger, outrage, humiliation or disgust. The maximum penalty for such an offence is 3 years imprisonment.

If your client is a victim of such conduct, they should produce copies of the messages and obtain copies of records from the phone carrier or internet service provider to confirm the messages were sent. These records can be obtained pursuant to a subpoena.

2. Stalking

It is a criminal offence under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to stalk or intimidate a person with the intention of causing them to fear physical or mental harm. Prohibited conduct for this offence includes the use of phones, text messaging, email or other forms of technology such as social media, to stalk or intimidate someone. This offence attracts a maximum penalty of 5 years imprisonment. Similar provisions appear in other states.

3. Intimidating or Threatening Conduct

Section 474.15 of the *Criminal Code Act 1995* (Commonwealth) criminalises the use of phones, text messages, emails or online posts to intentionally threaten to kill someone. Such an offence is punishable by a maximum penalty of 10 years imprisonment. It is also a criminal offence under this section to use phones, text messages, emails or online posts to intentionally threaten to cause someone serious harm. Such an offence is punishable by a maximum penalty of 7 years imprisonment.

4. Encouraging suicide

A person is guilty of an offence under section 31C of the *Crimes Act 1900* (NSW) if they incite or counsel another person to commit suicide and that other person does commit or attempts to commit suicide as a result of that incitement or counsel. Such an offence carries a maximum penalty of 5 years imprisonment. Similar provisions appear in other states. Perpetrators who engage in cyber bullying may also face liability from internet or mobile phone service providers, websites, schools or non-penal courts.

5. Defamation

Criminal

Section 529 of the *Crimes Act 1900* (NSW) states that it is a criminal offence to publish false information about a person knowing that the information is false and having the intention to cause that person serious harm. Such an offence attracts a maximum penalty of 3 years imprisonment. Similar provisions appear in other states.

Civil

While criminal defamation is an available cause of action concerning various forms of cyberbullying, civil defamation is available as an alternate avenue for victims seeking compensation for damage caused to their reputation. A person who has experienced humiliation, ridicule or contempt as a result of particular comments or photos that were published about them on social media platforms may have a right to sue the perpetrator(s) for defamation. Such an action could extend to all those involved in the publication of the defamatory material.

7. Unauthorised access

In NSW it is a crime under section 308H of the *Crimes Act 1900* (NSW) to access or modify restricted data held in a computer with knowledge that such access or modification is unauthorised. A common example is when a person logs into another person's online accounts without obtaining their permission to do so. Such an offence attracts a maximum penalty of 2 years imprisonment. Under Federal legislation, an identical provision appears under section 478.1 of the *Criminal Code Act 1995* (Cth).

B. Courses of Action

Schools

Schools reserve the right to take reasonable disciplinary action against students who engage in bullying, such as issuing suspensions or expulsions. It is strongly advised that schools implement anti-bullying programs and action plans that are easily accessible to students and staff.

Section 60E of the *Crimes Act 1900* (NSW) criminalises assaulting, stalking, harassing or intimidating any school student or member of staff of a school while they attend that school. Such an offence carries a maximum penalty of 5 years imprisonment. In the event that a school believes a criminal offence has been committed, the school may contact the police and report the offence to them.

Website Administration and Phone Companies

By monitoring the content being posted on their sites, website administrators can remove content that can be classified as a form of cyberbullying. Website users may be issued with warnings or have their accounts deleted. A person that engages in cyber bullying may have their phone number and contract cancelled by their phone company.

Helplines and Other Courses of Action

If your client is being affected by bullying and/or wishes to speak to someone about their situation, you can advise them to contact Helplines such as Lifeline, Beyond Blue or Kids Helpline.

Alternatively, you can advise your client to do any of the following:

- *Refrain from reacting negatively on social media, email or phone.*
- *Confide in someone about a post or publication that upsets or offends them so that appropriate action can be taken.*
- *Ask the offender who posted the inappropriate material to delete it and if they refuse, to explain that their conduct could constitute a criminal offence. Either you or your client can send the person a notice outlining the relevant laws and your possible intention to pursue legal action if they do not delete the material.*
- *Record evidence of bullying, such as taking screenshots, recording times and dates of phone calls, texts, posts etc.*
- *Block the offender on social media, websites or phone apps to stop them from contacting your client.*
- *Report the bullying to the website so that they can remove the inappropriate content themselves if it is contrary to the website's terms of permissible use.*
- *Report the bullying to their phone company if it takes the form of inappropriate calls or texts. The caller/sender may be traced and a warning letter can be issued. The phone company may even suspend or cancel the offender's phone number or phone contract.*
- *Report the bullying to the police.*
- *Apply to the court for a protection order that prevents the offender from contacting your client.*

Cyberbullying – Racial Discrimination and Sexual Harassment

Cyberbullying can also involve demonstrations of hatred based on race, which is in contravention of the *Racial Discrimination Act 1975* (Commonwealth). Section 18C makes it unlawful to do something in public based on the race, colour, national or ethnic origin of a person or group of people which is likely to offend, insult, humiliate or intimidate. Such behaviour can include racially offensive content that is posted on websites, social media sites and other internet forums.

Cyberbullying can also take the form of online sexual harassment, which is unlawful under the *Sex Discrimination Act 1984* (Commonwealth) if the harassment could reasonably be anticipated to offend, humiliate or intimidate the person to whom the harassment is directed. The type of conduct envisaged by this section includes making an unwelcome sexual advance or request for sexual favours or engaging in other unwelcome conduct of a sexual nature. In the context of cyberbullying, sexual harassment can take the form of sexual text messages or emails, inappropriate advances on social media and accessing sexually explicit websites.

If your client is a victim of online discriminatory comments, unwelcome sexual advances or threats from a co-worker or person at school, you can advise them to make a complaint to the NSW Anti-Discrimination Board or the Commonwealth Australian Human Rights Commission. A comment may be discriminatory if it mocks someone based on their race, sexuality, or transgender identity.

There is a simple procedure for lodging a complaint of discrimination. A written complaint can be submitted to a State Anti-Discrimination Board or the Australian Human Rights Commission by filling out the form provided on their websites. Submission of a complaint will likely lead to a process of conciliation. If the matter is unresolved, then an application can be lodged with the Equal Opportunity Division of the Administrative Decisions Tribunal if it is a State issue, or the Federal Court of Australia or Federal Circuit Court if it is a Commonwealth issue.