Bullying, Young People and the Law: Challenges for the Future

(the current landscape with particular reference to schools)

By

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Introduction

I am honoured to have been requested to give this address this evening and particularly to do so at St Joseph’s College, or Terrace as it is generally known. I received the invitation from Mike Wilkinson, the President of the Queensland Branch of the Australia and New Zealand Law Association (ANZELA) and in his letter he indicated that Terrace was a particularly suitable location for this address given that amongst its alumni was the Hon Justice Neil Buckley, a distinguished judge of the Family Court of Australia. In accepting the invitation I told Mike that I had delivered the eulogy at Neil’s Requiem Mass a few weeks before and that I would like to dedicate tonight’s address to his memory, to which he immediately agreed.

I am particularly pleased that Neil’s wife Helen and his daughter Eugenie, also a lawyer, have been able to come tonight. Apart from Neil’s association with Terrace, a school of which he was very proud, it is also fitting that he be remembered in this address as a person who was the antithesis of a bully and one of the most outstanding judges and friends that I have known. He had a deep regard for the needs of people who are disadvantaged or oppressed and would have approved the issues that I am discussing tonight. Appropriately enough in this setting, he was also a fine rugby player.

He made a great contribution to the law in Australia as a judge of the Family Court of Australia and in his roles as Judge Administrator for Queensland and later NSW and finally as Senior Administrative Judge of the Family Court. He had many other roles both within and outside the Court including the Presidency of the Australian Institute of Judicial Administration, and made significant contributions to judicial education in Australia, Canada and the Pacific and pioneered the development of modern case management in Australian courts. He was an outstanding individual and is greatly missed.

In introducing this topic this evening I should say a few words about the Alannah and Madeline Foundation (AMF), of which I am a member of the Advisory Board and the National Centre against Bullying (NCAB), which I have chaired since 2002. It is through these organisations that I became directly involved in the subject of bullying.

The Alannah and Madeline Foundation (AMF) is a national charity, keeping children safe from violence. The Foundation was established in memory of Alannah and Madeline Mikac, aged six and three, who, with their mother and 32 others were killed at Port Arthur, Tasmania on 28 April 1996. It cares for children who have experienced or witnessed serious violence and run programs that prevent violence in the lives of children. It was founded at the instance of their father Walter Mikac, who is still active in the support of the Foundation.

The Foundation plays an advocacy role and is a voice against childhood violence and is the auspice organisation for the National Centre against Bullying (NCAB).

NCAB is a peak body made up of experts in the fields of childhood wellbeing and bullying. It consists of a group that involves the leading academics in the field of bullying in Australia, together with experienced teachers, psychologists, representatives of interested organisations
and other persons with a specific interest in the problem of bullying. As part of its charter it has conducted numerous conferences and seminars and made substantial submissions to State and Federal Governments in relation to bullying problems. It has also worked closely with the Alannah and Madeline Foundation in the development of its ground breaking eSmart programmes designed to assist schools, teachers and parents to cope with current problems, particularly relating to cyberbullying, that I will discuss later.

NCAB holds biennial conferences bringing together experts not only from Australia but other parts of the world and its 2014 conference will be conducted in Melbourne on 6-7 August 20012. Issues discussed will include bullying and gender, law, mental health and new perspectives on related issues such as early childhood approaches and workplace bullying.

Types of Bullying

Bullying may be physical, verbal, social or psychological. It is often harmful to victims and has homophobic or racial overtones. It can in extreme cases lead to suicide. There are many variations in types of bullying but the general research understanding is that there are four main kinds of bullying.

These are:

- Physical bullying, including hitting, kicking, tripping, pinching and pushing or damaging property.
- Verbal bullying, including name calling, insults, teasing, intimidation, homophobic or racist remarks, or verbal abuse.
- Covert bullying, which is often harder to recognise and can be carried out behind the bullied person's back. It is designed to harm someone's social reputation and/or cause humiliation. Covert bullying includes: lying and spreading rumours, negative facial or physical gestures, menacing or contemptuous looks, playing nasty jokes to embarrass and humiliate, mimicking unkindly, encouraging others to socially exclude someone or damaging someone's social reputation or social acceptance.
- Cyberbullying is overt or covert bullying behaviour using digital technologies. Examples include being sent derogatory or harmful text messages/pictures/video clips/emails or having them posted on the internet or sent to others. It can also be the deliberate exclusion of someone from social networking spaces. Cyberbullying can happen at any time. It can be in public or in private and sometimes only known to the target and the person bullying.

**The Extent of the Problem of Bullying in Australia**

- 27 per cent of young people report they are bullied every two weeks or more often.²
- Cyberbullying happens to about 1 in 10 Australian young people every few weeks or more often.³
Bullying can seriously damage physical, social and emotional health. Students who are bullied are more likely to have low self-esteem and poor assertiveness skills. This can affect their psychological and mental health, and result in academic difficulties due to social exclusion, peer rejection, depression, and negative self-perceptions. They are also more likely to have poorer health and more somatic complaints, more interpersonal difficulties, higher levels of loneliness, suicidal ideation and increased anxiety. Alternatively, students who bully others are more likely to be aggressive, impulsive, insecure, lack empathy and have poor personal and social skills.4

Students who are bullied by others in the schoolyard and other 'real' environments often feel more comfortable communicating online, and are significantly more likely (51 per cent) to engage in cyberbullying as a means of retaliating against serious conventional bullying.5

Bullying is an intra and inter-generational phenomenon, with children who bully others at the age of 14 years likely to still engage in aggression at the age of 32 years and to have children who themselves engage in bullying and aggression.6

Not all children who bully are on the trajectory that leads to violence and criminality later in life. But of all children, these are the ones most at risk for eventually committing violent crimes.7

A study in Sweden found 60 per cent of the boys labelled as 'bullies' in Years 6-9 (aged 13 to 16) had at least one criminal conviction by the age of 24. Former school bullies were four times more likely than other students to engage in relatively serious crime.8

Young people who are bullied tend to have a dislike of and want to avoid school.9

The problems presented by bullying have undoubtedly been exacerbated by cyber-bullying. Modern technologies such as E-mail, texting and networks like Google, Facebook and Twitter have opened up new ways of communication. With them have come cyber-bullying and the use of cyberspace for harassment.

It is only comparatively recently that bullying has received much academic or other attention. When I was at school bullying was very much part of life and the usual adult response was that all children engage in bullying of one form or another, they grow out of it and usually not much harm is done.

We are starting to see that this past approach of trivialising the problem is unsatisfactory and that many people who are the subject of bullying suffer permanent harm.

**Legal Issues relating to bullying**

The issues of bullying and cyber-bullying are very topical and there are encouraging signs that Governments are taking steps to address the issue.10
It is important to remember that under the law at present, bullying is neither a criminal offence nor a civil wrong. This means that any attempt to invoke the criminal law is an attempt to fit the bullying conduct into a legal framework designed for something else. If it does not fit there is no offence or claim available.

It is also important to remember that children under ten are deemed by law to be incapable of committing a crime and that children under 14 are only liable if the prosecution can prove that they knew that what they were doing was not only wrong but had a full appreciation of the gravity of their actions. Thus for most purposes when we speak of children in the context of criminal offences we are speaking of children between 14 and 18 and in Queensland between 14 and 17.

In this regard it can I think be said that bullying is one of the few forms of seriously antisocial conduct that is not directly proscribed by law. Other such conduct such as assault, stealing and the like constitute criminal offences of which children, within the above age limits, can also be guilty.

In relation to physical bullying the most obvious application of the criminal law is the law of assault in its various forms ranging from common assault to manslaughter and murder.

Typically, State and Territory legislation has also been amended to extend anti stalking legislation to cover more serious forms of conduct falling within the category of bullying. A specific offence has been created in Victoria carrying a maximum of 10 years imprisonment but it neither refers to nor defines bullying, but rather specifies types of conduct usually falling within the definition of bullying.

Commonwealth legislation, which similarly is not directed to bullying per se, is wide enough to cover most forms of cyber bullying, and the test of its application is the misuse of a carriage service and penalties involve a maximum of three years imprisonment.

Under Commonwealth law it is an offence to “use a carriage service to menace, harass or cause offence, or for the purposes of a threat”. It is also an offence to “knowingly or recklessly use a telecommunications service in such a way as would be regarded by reasonable persons being, in all the circumstances, offensive”.

In these circumstances it is often argued by Governments and some judges and academics that there is no need to create a specific offence of bullying as any serious cases of bullying is covered by other legislation. In my view this is a prosecution related approach which ignores two very important objects of the law, namely education and general deterrence. Surely it is better for the law to operate so far as it can to prevent antisocial behaviour from happening rather than prosecuting someone when it does so.

While there is a place for laws that carry with them severe penalties for serious misconduct such as those mentioned, their very serious nature leads to a situation where police and prosecution authorities are reluctant to avail themselves of them in less serious but troublesome cases. It was for this reason that the NZ Law Commission in the case of cyber-
bullying, recommended that there be a less serious offence carrying a maximum of three months imprisonment for the latter type of case.

Further, despite the existing laws, bullying is rife in Australia and the evidence is clear, both in Australia and NZ that most people and young people in particular, are oblivious to the fact that bullying conduct, whether in cyberspace or otherwise, may in fact be a crime. This means that they often engage in bullying behaviour oblivious of the fact that there may be legal consequences, or of the seriousness of their conduct and are horrified to discover that they may have committed serious offences in the rare cases where criminal action is taken.

Symposium on Bullying, Young People and the Law, Melbourne July 2013

A symposium on this subject was conducted in Melbourne over two days and was attended by over 100 people from all over Australia and from New Zealand, consisting of judges including Children’s Court judges and magistrates from Australia and NZ, lawyers, academics, sociologists and education experts and representatives of the NZ Law Commission, which last year reported on cyber-bullying.

The issue of whether a new offence was needed to deal with bullying, as had been recommended by the NZ Law Commission in relation to cyber-bullying, was debated at length and the conclusions of the Symposium were that the following action was required:

a) Education

b) Appropriate responses by organisations to incidences of bullying and cyberbullying

c) The establishment of a national digital communication tribunal, and

d) An appropriate legal framework to address bullying and cyberbullying (emphasis added)

- All governments to consider the introduction of a specific, and readily understandable, criminal offence of bullying, including cyberbullying, involving a comparatively minor penalty to supplement existing laws which are designed to deal with more serious forms of conduct. In developing the above approaches, it is necessary to take into account:

  i. the voices of children and human rights

  ii. summary offences that do not require proof of specific intent to cause harm

  iii. appropriate penalties that in the case of children do not include incarceration

- The Federal Government to establish a national digital communication tribunal with the power to act, speedily and in an informal manner, to direct the immediate removal of offensive material from the internet.

- The adoption of the recommendation of the Victorian Law Reform Committee Report on Sexting in all states and territories.

It was of interest to note that the group of young people from two schools who attended the Melbourne Symposium were largely unaware that cyber-bullying could lead to criminal prosecution but were of the view that it should be a specific offence.
Defining Bullying

The pioneering Norwegian researcher, Daniel Olweus defined bullying as follows:

“A person is being bullied when he/she is exposed, repeatedly and over time, to negative actions on the part of one or more other persons. Negative action is when a person intentionally inflicts injury or discomfort upon another person, through physical contact, through words or in other ways. Note that bullying is both overt and covert behaviours.”

Professor Rigby, an internationally regarded expert on bullying (and an NCAB member) in an article discussing the difficulties of definition of bullying, arrived at the following formulation:

“Bullying involves a desire to hurt + hurtful action + a power imbalance + (typically) repetition + an unjust use of power + evident enjoyment by the aggressor and a sense of being oppressed on the part of the victim. (Rigby, 2002)

AMF and NCAB have adopted the following generally accepted definition of bullying:

“Bullying is when someone or a group of people with more power repeatedly and intentionally causes hurt or harm to another person or group of people who feel helpless to respond. Bullying can continue over time, is often hidden from adults and will probably continue if no action is taken.”

However it may be that this definition needs to be re-examined, at least in relation to cyber – bullying if, as I would argue it should, bullying becomes an offence against the law. I will return to that issue later in this address.

The problem with cyber bullying is that there are cases where a single episode can have a multiple effect, such as placing offensive material on a website about a person, or widely distributing an offensive photograph or email. Also for the purposes of the law, it is difficult to see why a single wrongful act which has serious effects on a victim should be characterised any differently from a repeated act, although the fact that the act is repeated may go to the gravity of an offence and penalty.

It is important to note that AMF and NCAB regard bullying as arising from social contexts. It is therefore a primarily a relationship problem requiring relationship solutions, including education.

Like those attending the Symposium, I consider that there should be a legal framework against which conduct can be judged, which would have the effect of setting boundaries and providing community education as to the type of conduct that the law regards as unacceptable, as well as providing a degree of deterrence.

Legal Definition of Bullying
I think that a distinction needs to be drawn between the traditional definitions of bullying adopted by Olweus and Rigby and followed by AMF and legal definitions, because the traditional definitions have evolved in an environment where bullying has never been an offence and has thus never had to be defined in legal terms.

Canada

The following Provinces have recently introduced anti-bullying laws that create bullying as an offence, namely Alberta, Manitoba, New Brunswick, Nova Scotia, and Quebec.

Some interesting definitions have been adopted and I shall here refer to two of them, Ontario and Nova Scotia.

**Ontario** has defined bullying in the following terms:

"Bullying" means aggressive and typically repeated behaviour by a pupil where,

a. the behaviour is intended by the pupil to have the effect of, or the pupil ought to know that the behaviour would be likely to have the effect of,

   i. causing harm, fear or distress to another individual, including physical, psychological, social or academic harm, harm to the individual’s reputation or harm to the individual’s property, or

   ii. creating a negative environment at a school for another individual, and

b. the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of special education."

This legislation is confined to bullying in a school environment but could easily be converted into a more general form. [1]

**Nova Scotia** legislation created bullying and cyber bullying as criminal offences following an extensive public inquiry and report into bullying. It is important to note that the definitions adopted differed from the traditional definition of bullying.

These definitions are as follows:

Bullying means behaviour, typically repeated, that is intended to cause or should be known to cause fear, intimidation, humiliation, distress or other harm to another person's body, feelings, self-esteem, reputation or property, and can be direct or indirect, and includes assisting or encouraging the behaviour in any way.
Cyberbullying means bullying by electronic means that occurs through the use of technology, including computers or other electronic devices, social networks, text messaging, instant messaging, websites or e-mail."

New Zealand

Following the report of the Law Commission, a Harmful Communications Bill has been introduced by the Government into the NZ Parliament which creates new offences relating to cyber bullying. The NZ Bill does not deal with any other type of bullying than cyber bullying as the Law Commission’s terms of reference were confined to cyber bullying. This probably reflects media and political attention to cyber bullying but the position of AMF and NCAB is that there should be no distinction between the two forms of conduct and indeed the research shows that children and young people who are cyber-bulled are usually subject to more conventional forms of bullying as well.

The new NZ offences consist firstly of inciting a person to commit suicide in circumstances where no actual suicide or attempted suicide has occurred, which carries a penalty of up to three years imprisonment. This is an addition to an existing section of the NZ Crimes Act, which hitherto dealt only with inciting suicide where a person has attempted to commit or has committed suicide and which carries a penalty of 10 years imprisonment.

Secondly an offence of harmful digital communication is created carrying a penalty of up to three months imprisonment. Clause 19 of the Harmful Communications Bill is as follows:

Causing harm by posting digital communication

- (1) A person commits an offence if—
  - (a) the person posts a digital communication with the intention that it cause harm to a victim; and
  - (b) posting the communication would cause harm to an ordinary reasonable person in the position of the victim; and
  - (c) posting the communication causes harm to the victim.

(2) In determining whether a post would cause harm, the court may take into account any factors it considers relevant, including—
  - (a) the extremity of the language used:
  - (b) the age and characteristics of the victim:
  - (c) whether the digital communication was anonymous:
  - (d) whether the digital communication was repeated:
  - (e) the extent of circulation of the digital communication:
  - (f) whether the digital communication is true or false:
Interestingly enough the NZ Parliament has avoided defining cyber-bullying. The Bill follows the recommendations of the NZ Law Commission in its 2012 Report.

A reading of the Commission Report suggests that the reluctance to define cyber-bullying may be due to the difficulty of definition coupled with the desire to express the offence of cyber bullying widely enough to cover every situation of harmful electronic communication. In that context that approach may be valid but it loses the value of sending a message that bullying is against the law.

Further Discussion

In the Nova Scotia legislation, the need for the conduct to be repeated to constitute bullying has been modified so that it is no longer an absolute requirement but is said to be 'typically repeated'. This also appears in the Ontario legislation. There are concerns about the rigidity of this requirement in the classic definition, which has been exacerbated by cyber bullying where one act can effectively be repeated by the extent of its dissemination to others. Nevertheless what distinguishes bullying as a particularly hurtful form of conduct is its repetition and arguably this modification recognises this while leaving open the possibility that a single act may have the same effect.

However the new Commonwealth legislation in Australia referred to above preserves the requirement of repetition as an essential factor in relation to workplace bullying, presumably to distinguish bullying as more serious conduct than single acts of harassment.

Secondly the need for a power imbalance to be present has disappeared from the Nova Scotia definition. It is retained in the Ontario legislation but the word used are "real or perceived" in respect of the power imbalance, which again modifies it.

If it is to be retained I think it better to use the words "typically involving a power imbalance". I say this because the bullying itself may have created a power imbalance where none existed before. It is not uncommon as I understand it for talented or distinguished individuals to be the subject of bullying by others of less distinction (the tall poppy syndrome) and it is the effect on them that creates the power imbalance in favour of those doing the bullying which did not exist before. Similar considerations apply to cases where teachers are bullied and particularly cyber-bullied by pupils. It would normally be expected that the power imbalance lies with the teacher, but this shifts as a result of the bullying.

Intention required to constitute the offence of bullying

Both Canadian provincial Acts referred to are interesting in that they deal with the question of intention on a “knew or ought to have known” basis. However the New Zealand Bill requires proof of specific intent and additionally a finding that posting the communication would cause harm to an ordinary reasonable person in the position of the victim.
In my view the Canadian qualification is important in the context of bullying where the explanation on behalf of the perpetrator is so often that “We were only joking’ or “We didn’t mean any harm”.

Civil Law

Its purpose is to provide a remedy to individuals who suffer damage at the hands of others. In the context of bullying the most relevant wrongs are negligence, breach of statutory duty and assault.

Negligence is a failure to take reasonable care for the safety of a person to whom a duty of care is owed. In the case of a school, a duty of care is clearly owed to the pupils when they are at the school or engaged in school activities. The duty is owed by the school authority, and school staff. The school authority is liable for any negligence of the school or its staff. A breach gives rise to damages if the injury was foreseeable and the injury was, on the balance of probabilities caused by the breach. Statutes may apply additional requirements to schools leaving them open to actions for breach of statutory duty.

Assault is also a criminal offence that can be used to found an action for damages. It is a remedy that is usually only available against the actual perpetrators, but also against the school in the case of an assault by a staff member.

An action for damages is useful in seeking compensation from a school authority for breach of contract or the negligence of itself or staff, but it is a remedy that is only available after the damage has been suffered.

Proof of psychological injury also presents a problem and cyber-bullying often gives rise to it. In all Australian jurisdictions other than Queensland and the NT the perpetrator must be found to have foreseen that a person of ‘normal fortitude’ might suffer psychiatric illness from their actions.

The possibility of being subject to a claim is useful in encouraging school authorities to set up proper systems and policies for dealing with bullying because the absence or inadequacies of such policies are likely to render them liable. Damages may be very substantial. In one NSW case, damages exceeded $1M.

Responsibility for Controlling Bullying

What are the limits of the responsibility of parents, schools and individual teachers? What is the role of police and courts?

There are no simple answers. Teachers and parents have difficulty controlling what happens outside school and homes. Cyber- bullying in particular is usually private, away from the supervision of teachers and parents. Unless the conduct involves a clear and serious breach of the law there is little role for the courts and police.

Geographical Limits
When bullying takes place outside the school grounds, the legal situation is not clear. In Australia, a majority of the NSW Court of Appeal held that a school was liable where pupils of another school threw objects at the plaintiff that caused him an eye injury outside the school grounds. They considered that the nature and duty of the teacher to the pupil is dictated by the particular circumstances and that in this case the school and its teachers did owe a duty of care to the injured child and that they were in breach of it and thereby guilty of negligence.\textsuperscript{21}

This is to be contrasted with the decision of English Court which held that a school was not liable for bullying that had taken place on a bus, saying that the responsibility of the school will usually end at the school gates. It concluded that “the school cannot owe a general duty to its pupils, or anyone else, to police their activities once they have left its charge. That is principally the duty of parents and, where criminal offences are involved, the police.”\textsuperscript{22}

If the school and its teachers are aware that bullying is taking place on the way to and from school, or at home in the case of cyber bullying, what should they do? If they bear no responsibility then who should? Who would be in a better position to protect the child? The police can only act if a crime has been committed and it is asking much of parents to adopt an effective method of prevention. If the parents are aware that their child is engaged in bullying they may have a duty to control it, but it is difficult to see how they can do it.

Although views will differ, it is arguable that once the school or its teachers become aware that a child is being or is likely to be bullied on the way to or from the school, or at home, then they are under a duty of care to take reasonable steps to prevent this from occurring. This is particularly so where the perpetrators are students at the same school. The decision of the majority of the NSW Court of Appeal is consistent with the existence of a duty that may extend beyond students at the same school.

The Supreme Court of Canada has held that in certain circumstances sexual harassment of a co-worker outside the workplace can give rise to legal responsibility on the part of the employer.\textsuperscript{23} In my view this approach is also applicable to schools in relation to bullying and cyber-bullying.

In Australia there is need for legislative action by Federal State and Territory Governments in this important and troublesome area. What is needed is a clear legislative statement as to the boundaries of acceptable conduct and the extent of the liability of schools and teachers to protect children from harm. At present it is all too easy for education authorities, schools and teachers to avoid taking responsibility. The introduction of specific offences of bullying and cyber-bullying would further clarify the matter together with such a clear legislative statement.

**Conclusions and the Way Ahead**

The law can do no more than provide a framework and set out the boundaries of acceptable conduct. It cannot of itself operate to control bullying and in this regard, much more needs to be done. As the Melbourne Symposium concluded, the first and foremost weapon to control
bullying is education. Unfortunately, we have been lacking in this area in Australia and elsewhere. Teachers receive little or no training in dealing with this difficult issue and too many schools have either no policies to deal with it or have policies on paper, but do not implement them.

In this context, it is appropriate that I mention that AMF has recently made a significant practical contribution to the problem of handling bullying.

A major initiative of the Foundation, with the advice of NCAB, is its eSmart programme. The eSmart approach is based upon the premise that real behavioural and cultural change requires systemic, long-term, multifaceted interventions. It is based on the most successful behaviour-change campaigns in Australia, the SunSmart and Quit campaigns.

As bullying and other forms of personal attack started to move to cyberspace, prevention efforts have also moved to address cyberbullying and broader issues of cyber-safety and wellbeing. eSmart’s overarching aim is to equip people with the knowledge and skills to get the best out of technology while avoiding the pitfalls and taking on a range of ethically informed behaviours. The eSmart schools initiative is a whole-school change program that helps schools enhance wellbeing, manage cyber-safety and reduce cyberbullying and bullying. eSmart Schools is a comprehensive, scalable approach that equips the whole school community with the necessary skills and knowledge to manage cyber-safety and bullying, providing the roadmap for creating a safe school.

Using an online tracking tool, schools monitor and report on progress in taking the steps to create a cyber-safe school. Schools also have access to face-to-face and online training, a helpdesk, up-to-date resources and regular newsletters.

The Victorian and Queensland Governments have agreed to introduce eSmart into all government schools and it is already operating in more than 2000 schools throughout Australia, including 180 in Queensland. Reports received from these schools are almost overwhelmingly favourable.

It is important to point out that this initiative is designed to give schools information and assistance to design their own programmes in this area rather than simply giving them a programme to implement. There are many different programmes available which vary quite considerably and the purpose of eSmart is to assist schools to choose the best programme for their needs.

The Foundation has also developed eSmart libraries, which aims to spread the message of ‘smart, safe responsible’ into community hubs and organisations. With the support of Telstra this is being introduced into some 1500 of such locations throughout Australia. An eSmart Library operates under a framework for embedding cyber-safety into its policies, procedures and teaching/support of library users.
The latest development in this programme is **eSmart Homes**, designed to assist parents to cope with problems relating to cyber-safety and cyber-bullying. eSmart is focused on educating individuals about the smart, safe and responsible use of digital technologies, but within a setting where organisational operations support a culture of appropriate behaviour.

While legislation is necessary to provide a framework as I have argued, it is initiatives such as these which are likely to have the greatest impact in enabling our children and young people to cope with some of the problems associated with the new age of cyber-space.

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3. Ibid.
4. Ibid
6. Ibid
10. Apart from the Victorian and Queensland Government initiatives that I have mentioned, the Federal Government has recently issued a discussion paper ‘Enhancing Online Safety for Children, which opens for discussion whether there should be an E- Commissioner empowered to make takedown orders in respect of offensive material appearing on internet organisations such as Google, Facebook and Twitter. The Paper also discusses the issue of whether there should be a specific criminal offence of cyber-bullying
11. s. 4.7.4.15 and 4.7.4.17 of the Criminal Code Act 1995 (Cth)
12. s 85ZE Crimes Act 1914 (Cth
13. Kelly Tallon, Ahram Choi, Matthew Keeley, Julianne Elliott and Debra Maher, New Voices/New Laws: School-age young people in New South Wales speak out about criminal laws that apply to their online behaviour (2012) National Children’s and Youth Law Centre and Legal Aid NSW
18. New South Wales v Lepore; Samin v Queensland; Rich v Queensland 2003 HCA 4 (sexual abuse by teachers)
19. E.g. Civil Liability Act 2002 (NSW); Wrongs Act 1958 (Vic)
22. Bradford-Smart v West Sussex County Council [2002] EWCA Civ 7