

TASMANIA
LAW REFORM
INSTITUTE

Submission Template

The Template contains a series of questions, which are intended to guide your response to the issues covered in the Issues Paper. You can choose to answer any or all of these questions. It would be helpful if you could explain the reason for coming to your conclusion.

The Template can be filled in electronically and sent by email or printed out and filled in manually and posted.

- The form is designed to be completed electronically by entering responses. The space provided for your answer will expand (if necessary) as you type. You are invited to include as much or as little information as you choose.
- Alternatively, you may print out the form and either fill it in manually or use a separate answer sheet (if you use a separate answer sheet, please ensure that you clearly number your answers to correspond with the questions in this form). Again, you are invited to include as much or as little information as you choose.

After you have completed your submission please either *email* or *post* the document to the Institute:

Email: law.reform@utas.edu.au

Post: Tasmania Law Reform Institute
Private Bag 89
Hobart TAS 7001

Personal information

Name:

Organisation (if any):

Address:

Email:

Phone number:

Publication of submissions

Please tick the applicable box:

I agree to the publication and use of my submission

I agree to the anonymous publication and use of my submission

I do not agree to the publication or use of my submission

The Capacity of Current Tasmanian Laws to Address Bullying

Bullying is a complex social problem. It can manifest in a number of ways and is difficult to define. The consequences of bullying can differ depending on the person bullied, and bullying often involves young people, raising questions about how and indeed whether the law should be used.

This Issues Paper is concerned with the use of legal frameworks to address bullying. The effectiveness of Tasmania's laws when dealing with bullying (including cyberbullying) has been the subject of significant community concern. Recent instances of suicides attributed to bullying appear to have strengthened community desire to ensure that the law is able to deter and sanction bullying behaviour and to ensure that the law is responsive to bullying that occurs through new technologies. Other jurisdictions are also concerned with the effects of bullying and are similarly grappling with questions of whether and how the law should be used to deal with bullying.

The Issues Paper examines the current laws and legal frameworks in Tasmania that are potentially able to address bullying behaviours, including cyberbullying. It discusses the legislative approaches taken by other jurisdictions to address the problem of bullying and considers whether legislative reform in Tasmania is necessary to deal with bullying and options for possible reform.

QUESTIONS:

Question 1

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

Question 2

Do you think that legislative reform is necessary to address the problem of bullying?

Question 3

Do you think that the current avenues to address workplace bullying in Tasmania are sufficient? Why or why not?

Question 4

Should Tasmanian legislation be amended to include anti-bullying provisions that mirror the *Fair Work Act 2009* (Cth) procedures?

Question 5

If reform is necessary, what kinds of bullying do you think a legal response should address?

Question 6

In any legislative response to bullying, should cyberbullying be dealt with as a discrete practice or as one form of more general bullying?

Question 7

Do you think that a criminal response to bullying is appropriate? Why or why not?

Question 8

If you think that a criminal response is justified, do you prefer amendment to the stalking provision or the creation of a separate offence or bullying? Why?

Question 9

If you prefer amendment of the stalking provision, how should the provision be amended?

Question 10

If you prefer the creation of an offence of bullying:

- (a) What kinds of behaviour should be included in the offence?
- (b) What kind of consequences should be intended or caused (eg, should the offence be established where an offender has intended to cause serious emotional distress or should a higher threshold of harm be required)?
- (c) What form should the mental element take?

Question 11

Do you think that bullying should be a civil wrong?

Question 12

If so, what kind of behaviour should be proscribed?

Question 13

Is a criminal response also justified or should the civil action be the most severe legal response to 'bullying'?

Question 14

Do you think that it should be possible to apply for a 'bullying intervention order'?

Question 15

If so, what considerations do you think should be taken into account in making an order and in determining the conditions that can be imposed under an order?

Question 16

Do you think that the Anti-Discrimination Commissioner's functions should be extended to deal with bullying? If so:

- (a) how should the prohibition on bullying be described?
- (b) should the victim have to establish that they have been bullied or should the onus to disprove bullying shift to the alleged bully?

Question 17

How should third parties be involved in the resolution process?

Question 18

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

Question 19

If yes, how prescriptive should the requirements be? For example, should they stipulate minimum standards in relation to investigative and disciplinary measures within schools and reporting obligations between schools, or should they instead merely require the formulation of statements of principles or targets?

Question 20

Should the policies and procedures be uniform between schools, or should schools have discretion to create their own within set requirements?

Question 21

If reform is desired, should a tiered response be implemented or is only one type of response necessary? If a tiered response is preferred, how should the tiers be structured? Should a tiered response be embodied in one legislative provision or should it be located in different pieces of legislation depending on the type of bullying, its location and who is involved?