

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Criminal Code Amendment (Bullying) Bill 2019*

*\*check Hansard for delivery\**

Madam Speaker, I move that the Bill now be read a second time.

This Bill delivers on the Government's commitment to amend the *Criminal Code* to make serious cyberbullying a criminal offence.

While the growth of the internet and online access has many wide ranging benefits, technology can also generate difficulties and issues within the community, such as the problem of cyberbullying. As technology becomes increasingly intertwined with almost every aspect of our lives, so too can the reach of those who may seek to do others harm. Our online lives now make bullying even more commonplace. Social media and other platforms mean bullies can now have access to their victims 24 hours a day, seven days a week.

Bullying can cause significant harm and have lasting effects on individuals and their families. As recent tragedies in Australia have shown, serious bullying can result in tragic personal consequences for victims, such as long term mental health impacts, self-harm and psychological damage. A criminal justice response is justified where the consequences of serious bullying behaviour are severe.

This Bill seeks to strengthen the criminal law by amending the existing stalking provisions in the *Criminal Code* to cover a range of serious bullying behaviours, whether they are pursued in person or online.

Clause 4 of the Bill proposes a number of amendments to section 192 of the *Criminal Code* to address serious bullying behaviours.

The Bill provides that the fault element relating to the state of mind of the accused in section 192(1) includes the intention to cause the victim extreme humiliation or to self-harm. The Bill specifies that the requisite intention for the crime of 'stalking and bullying' includes the intention to cause a person to self-harm, which could include aspects of both physical or mental harm.

These amendments make clear that an intention to cause a victim to engage in self-harm or experience extreme humiliation satisfies the fault element in the expanded offence against section 192.

The Bill also expands the fault element in section 192(3) so that where physical or mental harm, including self-harm, or extreme humiliation is actually caused, a person is taken to have the intention required if that person knows, or ought to have known that engaging in the relevant serious conduct would or would be likely to cause the other person physical or mental harm, including self-harm, or extreme humiliation.

The current offence of stalking in the *Criminal Code* lists a range of actions capable of constituting a 'course of conduct'. Accordingly, the conduct must occur on more than one occasion or be persistent or sustained. The Bill inserts new paragraphs (ea) and (eb) in section 192(1) to provide that the actions of 'making threats to the other person or a third person' and 'directing abusive or offensive acts towards the other person or a third person' can form part of a course of bullying conduct.

The Bill also proposes to broaden the conduct in paragraph (j) in section 192(1) to include acting in another way that could reasonably be expected to cause the other person physical or mental harm, including self-harm, or extreme humiliation. This makes clear that the proposed amendment is to extend to actions that cause a victim of serious bullying to engage in self-harm or experience extreme humiliation.

Bullying behaviour may be engaged in to cause mental harm to another person. Circumstances may arise where the suffering caused by sustained bullying is so severe that it causes the victim to engage in suicidal thoughts. For the purposes of the expansion of the crime of stalking to address serious bullying, this Bill provides that a reference in section 192 to mental harm includes a reference to suicidal thoughts.

Madam Speaker, this Bill provides a new subsection in section 192 specifying that the offence of 'stalking and bullying' will only be proceeded with if the Director of Public Prosecutions consents. The proposed requirement that the consent of the Director of Public Prosecutions is necessary to charge a person with the crime of 'stalking and bullying' is an important safeguard to protect an accused person's rights and that only the most serious examples of bullying will be criminally prosecuted. The requirement that the Director of Public Prosecution provide consent ensures consistency in charging decisions and that charges are not erroneously laid.

Special consideration is already given to the prosecution of persons under the age of 18 years. Guidelines issued by the Director of Public Prosecutions provide that prosecutions against young people should be used sparingly, and consideration should be given to alternative options such as cautions.

In addition, children under the age of 10 will not be criminally liable due to existing provisions in section 18 of the *Criminal Code*, and a child under the age of 14 would not be criminally liable unless he or she has the sufficient capacity to know that their act is one he or she ought not to do. This will be one of the relevant factors for the Director of Public Prosecutions to consider when deciding whether or not to prosecute.

For the avoidance of doubt regarding the commencement of these changes to section 192 of the *Criminal Code*, this Bill includes transitional provisions which specify that the amendments to section 192 apply only to offences alleged to have been committed on or after the commencement of this Bill.

This Bill also proposes an amendment to the *Justices Act 1959*. Currently the *Justices Act 1959* provides that the indictable crime of stalking may be dealt with summarily in the Magistrates Court if the defendant elects to do so.

The proposed expanded offence of 'stalking and bullying' in the *Criminal Code* is a serious indictable crime that should only be tried on indictment in the Supreme Court. In view of the seriousness of the alleged crime, the impact on the victim from such repeated conduct over a

period of time, the dynamics of control in this type of criminal behaviour, and for general deterrence, denunciation and just punishment, this Bill proposes that section 192 be removed from the list of crimes triable summarily.

This Bill also makes consequential amendments to the *Family Violence Act 2004* and the *Community Protection (Offender Reporting) Act 2005* to align the references to section 192 in these Acts with the *Criminal Code*.

Targeted consultation was undertaken on a draft version of this Bill and I thank those who made comments in response to the draft to address the serious issue of bullying, including cyberbullying.

Bullying can have devastating impacts on people, their families and the wider community. This Bill provides another option to respond to and address serious bullying behaviours that can have harmful and long-lasting impacts on victims and their families.

The Government is determined to do all it can to stop bullying and this Bill will improve legal responses to serious cases of bullying, including cyberbullying, to better protect victims and to hold perpetrators to account.

To be absolutely serious and resolute about addressing this issue, authorities must have the range of tools they need to respond to all levels of bullying. The reforms the Government proposes complement the host of measures we are already undertaking, as well as work being undertaken at a national level, to reduce this scourge on our society.

Madam Speaker, I commend the Bill to the House.