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Comparing Western Australia and South Australia public high school's cyberbullying policies – is there a need for a legislative change

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Master Thesis

Title: Comparing Western Australia and South Australia Public High School's Cyberbullying Policies – Is there a need for a legislative change

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Degree Sought: Master of Laws by Research

Name of School: School of Business and Law

Date of Submission: July 2022

ABSTRACT

The internet provides some of the most effective means of communication. Cyberbullying occurs when the internet is used to bully another person. Along with the positive aspects of the internet, cyberbullying is certainly one of the most negative aspects, especially with regard to school students. Victims of cyberbullying may be able to obtain legal sanctions, however, this usually occurs after the harm is done. In Australia, some states such as South Australia have recognised the need for preventive strategies by requiring schools to have an anti-bullying plan in place. Other countries, like Ontario, Canada have implemented similar preventative strategies in their legislation.

One way to reduce cyberbullying in schools is to create an anti-bullying culture within the school. The implementation of a cyberbullying policy that promotes a positive school culture, prevention and intervention strategies, support systems, clear definitions and reporting procedures, aid in creating this culture. An effective school cyberbullying policy will aid in the promotion of an anti-bullying school culture and thus lead to a reduction in bullying and cyberbullying behaviours.

This thesis argues that Western Australia should follow South Australia and Ontario in implementing legislation to require high schools to have a cyberbullying policy. This argument will be tested by answering two research questions: First, whether the cyberbullying policy is more prevalent, robust and openly displayed in South Australian public high schools compared with Western Australian public high schools; and second, what lessons can be drawn from legislation pertaining to cyberbullying in schools in Ontario and South Australia.

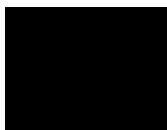
The research finding suggests that Western Australian public high schools do not have and do not openly promote policies pertaining to cyberbullying, whereas South Australian public high schools do. The research found that 88% of South Australian public high schools openly display their bullying policy, in comparison to only 51% of Western Australian public high schools. South Australia also has a state-wide bullying prevention program and legislation regarding the implementation of policies regarding bullying and harassment in schools. Legislation from

Ontario provides a different perspective regarding the implementation of bullying and cyberbullying policies in schools. Ontario's *Education Act* is more extensive than the legislation in South Australia with regards to cyberbullying in schools, as it includes definitions of bullying and cyberbullying, the rights and responsibilities of teachers, principals, and the school board to prevent and address bullying in schools, as well as encouraging a positive and inclusive school experience, and promoting strong and respectful relationships within the school and the community. Given that the existence of a cyberbullying policy in high school is an important tool in preventing and dealing efficiently with cyberbullying, these findings support the thesis argument that there is a need for similar legislation like the *Education Act* in Ontario, to be implemented in Western Australia.

DECLARATION

I certify that this thesis does not, to the best of my knowledge and belief:

- i. incorporate without acknowledgment any material previously submitted for a degree or diploma in any institution of higher education;
- ii. contain any material previously published or written by another person except where due reference is made in the text of this thesis; or
- iii. contain any defamatory material;



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CHAPTER ONE

Research Objective, Methodology, Research Structure and Organisation

1.1 Introduction

Cyberbullying has been found to be more complex than traditional bullying and has far worse impacts on its victims.¹ Due to the nature of cyberbullying, the perpetrators of this bullying behaviour have the ability to remain anonymous and reach a wider audience with their harmful content; the content can be easily spread by others making it difficult to control and contain once it is released.² The perpetrators also have constant access to their victims, via technology and the internet. Cyberbullies are able to reach their victims at any point in time. Cyberbullying can also cause a range of negative effects to the victims. This makes cyberbullying more harmful than traditional bullying and more challenging to prevent and stop.

In the internet age, many aspects of our lives (services, businesses, education, and social interactions) have become digitised.³ This trend, in turn, elevates the potential risk of exposure to cyberbullying,⁴ which can cause far reaching negative effects on a wide spectrum of severity, from feeling excluded to committing suicide.⁵ Media coverage often draws attention to young people committing suicide due to cyberbullying, however not all cases result in devastating effects. Most victims of cyberbullying experience depression, anxiety, stress, self-inflicted injuries, and other mental health related issues.⁶

¹ Cyberbullying Research Center, 'What is Cyberbullying?', *Cyberbullying Research Center* (Web Page) <<https://cyberbullying.org/what-is-cyberbullying>>.

² Ibid.

³ Explanatory Memorandum, Online Safety Bill 2021 (Cth) 13.

⁴ eSafety Commissioner, *State of Play – Youth, Kids, and Digital Dangers*, (Report, May 2018) 5 <<https://www.esafety.gov.au/sites/default/files/2019-10/State%20of%20Play%20-%20Youth%20kids%20and%20digital%20dangers.pdf>>.

⁵ Ann John, Alexander Charles Glendenning, Amanda Marchant, Paul Montgomery, Anne Stewart, Sophie Wood, Keith Llyod and Keith Hawton, 'Self-Harm, Suicidal Behaviours, and Cyberbullying in Children and Young People: Systematic Review' (2018) 20(4) *Journal of Medical Internet Research* 1, 1.

⁶ Ibid.

While anyone can be a victim of cyberbullying, research has shown that cyberbullying is most prevalent among school aged children, mainly those between the ages of 13-15 years old,⁷ and decreases as they age.⁸ According to the eSafety Commissioners⁹ report in 2021, it was found that approximately 44% of young Australians reported a negative online experience, with 15% having reported receiving online threats and abuse. The number of reported negative online experiences was over 50% for those aged between 14-17 years old;¹⁰ usually occurring at the children's home.¹¹ The fact that many children are able to have access to the internet anywhere and at any time via their mobile phone, increases the exposure to potential cyberbullying,¹² even during school hours.¹³

Concerning the legal framework, the literature review below indicates that schools in Australia owe a duty of care under the law of torts, to its students to ensure that a safe environment is provided,¹⁴ however, this may not be easy to establish especially in cases such as cyberbullying, where the harm may not occur on the school's grounds. There are legal remedies that are available such as compensation if the school was found to be in breach of the duty owed to the student, however, this is costly and lengthy to achieve.

While there are legal processes in place, including the eSafety Commissioner's powers to help take down cyberbullying materials, these procedures only help after the cyberbullying has been committed. Making it mandatory for high schools to have a cyberbullying policy, may reduce the potential harm that comes from cyberbullying, as well as reduce the number of victims that will have to go through court processes for obtaining justice and remedies.

⁷ Normann Witzleb and Thomas Crofts, 'E-Safety: Protection from Cyber-bullying, Sexting and Privacy invasion' (2016) *Children and the Law in Australia* 240, 243.

⁸ Meng-Jie Wang et al, 'How Common Is Cyberbullying Among Adults? Exploring Gender, Ethnic, and Age Differences in the Prevalence of Cyberbullying' (2019) 22(11) *Cyberpsychology, Behavior and Social Networking* 736, 740.

⁹ The eSafety Commissioner was established in 2015 and is Australia's national independent regulator and educator for online safety. The *Online Safety Act 2021* (Cth) is new legislation that makes Australia's existing laws for online safety more expansive and much stronger. See Part 3.1 for further discussion.

¹⁰ eSafety Commissioner, 'The digital lives of Aussie teens', *eSafety Research* (Web Page, February 2021) <<https://www.esafety.gov.au/sites/default/files/2021-02/The%20digital%20lives%20of%20Aussie%20teens.pdf>>.

¹¹ Sierra Crosby, 'The Connection Between Cyberbullying and Teenage Suicide: An Honors Thesis' (2018) *Honors College* 1, 44.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Robert Pelletier et al, 'Cyberbullying-When does a school authority's liability in tort end?' (2015) 6 *The Western Australian Jurist* 93, 100.

Schools have a fiduciary duty to ensure their student's safety, protect them from harm and intervene when any behaviour negatively impacts the school learning environment.¹⁵ This duty of care and responsibility positions the school as the central place to establish policies pertaining to cyberbullying prevention and treatment.

Western Australia lacks specific legislation or enforcement of mandatory guidelines on how schools should respond to cyberbullying. Although schools are obligated to provide a safe environment for their students and are required to implement policies with regard to positive behaviours, without legislative requirements, schools may be reluctant to establish cyberbullying policies.

This thesis argues that Western Australia should follow South Australia and Ontario in implementing legislation to require high schools to have a cyberbullying policy. This argument will be tested by answering two research questions: First, whether the cyberbullying policy is more prevalent, robust and openly displayed in South Australian high schools compared with Western Australian high schools; and second, a discussion on what lessons can be drawn from legislations pertaining to cyberbullying in schools in Ontario and South Australia.

Finally, legislative responses from both of these jurisdictions will be analysed with regard to their protection of school children against bullying and cyberbullying behaviours. Such legislative responses include the requirement of bullying and cyberbullying policies, the requirement for the inclusion of prevention and intervention strategies in these policies, as well as promotion of positive school climates that are inclusive and accepting.

The next section will outline the research methodology and explain the choice of the comparable jurisdictions, South Australia and Ontario, Canada.

¹⁵ Brian Wiseman, 'Cyberbullying in schools: A research study on school policies and procedures' (2011) *UNLV Theses, Dissertations, Professional Papers, and Capstones* 1, 52.

1.2 Research objective/purpose

The objective of this study is to explore whether there is a need for a legislative response in Western Australia similar to the ones enacted in South Australia and Ontario requiring schools to implement bullying and cyberbullying policies, state the rights and responsibilities of all teachers, principals, school boards to prevent and address bullying in schools, as well as encouraging a positive and inclusive school experience.

1.3 Research questions

This research seeks to answer the following questions:

1. Do West Australian public high schools openly display policies pertaining to cyberbullying in comparison to South Australian high schools?
2. What lessons can be drawn from the legislation pertaining to cyberbullying policy in high schools in South Australia and Ontario Canada?

1.4 Theoretical framework

Guba and Lincoln advocate that a research framework or paradigm is a system of philosophical beliefs or worldviews of an individual that assists an investigation and shapes the research process and direction within the philosophical setting.¹⁶ The beliefs of the researcher are reflected in the ontology (how the researcher views the world) and epistemology (the researcher's belief of how knowledge is created) and stretches from the positivist paradigm to the interpretive or phenomenology paradigm.¹⁷

The philosophical approach for this research follows an interpretive paradigm as it seeks to understand a particular context.¹⁸ The theoretical belief of the interpretive paradigm is that reality

¹⁶ Egon Guba and Yvonna S Lincoln, 'Competing Paradigms in Qualitative Research' in Norman K Denzin and Yvonna S Lincoln (eds), *The Sage Handbook of Qualitative Research* (Sage Publications, 2nd ed, 1994) 163.

¹⁷ Margaret McKerchar, *Design and Conduct of Research in Tax, Law and Accounting* (Thomson Reuters, 2010) 70-71.

¹⁸ Nguyen Cao Thanh and Tran Thi Le Thanh, 'The Interconnection Between Interpretivist Paradigm and Qualitative Methods in Education' (2015) 1(2) *American Journal of Educational Science* 24, 25.

is complex and ever changing.¹⁹ This research falls under the interpretive paradigm as it is socio-legal research that is reform oriented.

1.5 Methodology

The methodology used in this research is comparative method alongside a reform oriented legal research.

Comparative legal research can be viewed as the ‘critical method of legal science’.²⁰ The objectives of comparative legal research can range from aiding law reform as well as policy ‘development to the harmonisation of laws and helping courts to fill gaps in the law’.²¹ The function of this legal methodology is to understand one’s own domestic legal system and compare it to a foreign legal system.²² The comparative analysis involves a ‘descriptive phase of the legal norms, concepts and institutions’²³ followed by ‘identifying the similarities and differences between the legal systems compared’.²⁴

A comparative methodology is suitable for this study as it will be used to review high school cyberbullying policies in Western Australia and South Australia as well as relevant legislation in South Australia and Ontario. Findings from the first comparison show that cyberbullying policies are more prevalent and robust in South Australian high schools than in Western Australia’s high schools. These finding, in turn, suggests that there is a need for legislative change in Western Australia. To shape this proposed legislative change, the legislation of South Australia and Ontario, Canada will be explored.

There are two typologies for legal research: doctrinal and non-doctrinal. Doctrinal research investigates black letter law using a deductive form of legal reasoning. Non-doctrinal research is

¹⁹ Ibid.

²⁰ Marie-Luce Paris, 'Chapter 3: The Comparative Method in Legal Research: The Art of Justifying Choices' (2016) *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016), *UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper* 1, 8.

²¹ Ibid 9.

²² Ibid.

²³ Ibid 16.

²⁴ Ibid.

suited when it concerns people and social values and is concerned with a legal principle and its impact on society or the gap of the legal principle in society.²⁵ This form of legal research involves the assessment of a problem, evaluation of the policies and a need for reform.²⁶ The problems that are associated with current Western Australian public high school cyberbullying policies will be investigated using a non-doctrinal reform-oriented methodology. Reform oriented legal research will be used to recommend change.

1.6 Methods and Materials

Qualitative research methods were used for data collection and document analysis. Document analysis 'is a systematic procedure for reviewing or evaluating documents'.²⁷ The high school policies that were collected from Western Australia and South Australia were used for this research.

This research first looked at the current state of Western Australia's public high school bullying and cyberbullying policies and whether these high schools openly display their policies pertaining to bullying and cyberbullying, and whether these policies promoted anti-bullying or anti-cyberbullying culture. The sample includes all public high schools in the metropolitan area. 65 public high schools from Western Australia and 52 public high schools from South Australia fit this criterion. The anti-bullying and anti-cyberbullying policies were then collected from each of these schools' websites. The focus of this research was on high schools and excludes primary schools, due to the age of most bullying and cyberbullying victims being around the age of 13-15 years old. These policies were analysed by using thematic analysis. Themes were used form categories for the analysis of the policies²⁸ (See Appendix 3). Anti-bullying and anti-cyberbullying policies from schools in Western Australia and South Australia were compared.

²⁵ Debrashree Chakraborty, 'Empirical (non-doctrinal) Research Methods and It's role in Legal Research' (2015) 3(1) *International Journal of Advances in Social Sciences* 23, 23.

²⁶ Ian Dobbinson and Francis Johns, 'Legal Research as Qualitative Research' (2007) in Mike McConville and Wing Hong Chui *Research Methods for Law* (2nd ed) 1, 22.

²⁷ Glenn Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9(2) *Qualitative Research Journal* 27, 27.

²⁸ *Ibid* 33.

The research also looked at documents, policies, and guidelines provided by the Western Australia Department of Education to determine whether the public high schools followed and implemented the prevention strategies listed, as well as any procedures on dealing with cyberbullying. In South Australia, the government's state-wide bullying prevention strategy was examined to determine whether it made a difference in policy implementation at the school level.

Finally, the research looked at Ontario, Canada and its government's approach to cyberbullying prevention and legislative action. Ontario's *Education Act* was examined as well as cyberbullying laws from Nova Scotia. As Ontario and South Australia have both implemented bullying prevention strategies in their state legislation, this research concludes with a discussion as to whether Western Australia should adopt similar strategies in its state legislation.

1.7 Coverage and Scope

A limitation of this thesis is ambiguity as to whether cyberbullying policies implemented in the high schools researched actually work. Another limitation of this thesis is that the research is only conducted on public high schools within the metropolitan area of both Western Australia and South Australia. Private schools, primary schools, and schools outside of the metropolitan areas may offer different results.

With regards to the data collection of public high school policies for both Western Australia and South Australia, there may have been schools that do have an anti-bullying school policy internally but do not have it displayed on their school's website. As the data collection was only limited to the resources that the schools provided on their websites, schools that did not openly display their policies were not contacted, due to the scope of this research, to determine whether they did in fact have a school anti-bullying policy. To contact the schools directly to determine whether they have bullying policies that are not made publicly available on their school's websites, approval is required from the Department of Education. This was advised to be a lengthy process and was advised not to be appropriate for a Master's thesis. Therefore, only the policies publicly available on the schools' websites were collected for data. It is not assumed that the policies on the schools' websites represent the whole of the school's response to bullying and

cyberbullying. Schools that public display their policies online show accountability but it is also useful for prospective parents and members of the community to see how each school deals with issues of bullying and cyberbullying.

1.8 Thesis Structure and Organisation

This thesis comprises of 6 chapters.

Chapter 1 provides an introduction to the thesis including the research objective and questions followed by the research methodology.

Chapter 2 provides background information as to why it is important to have anti-bullying and anti-cyberbullying policies and culture implemented within schools. This chapter explores what bullying and cyberbullying are, the types of cyberbullying, the prevalence and devastating effects of cyberbullying, and a discussion of suicide cases resulting from cyberbullying. This chapter also explores the schools' duty and responsibilities to students in issues of bullying and cyberbullying, and lastly, a discussion on the importance of establishing a school policy, as well as the importance of establishing an anti-bullying culture in schools is presented.

Chapter 3 discusses the current bullying and cyberbullying legislation under Commonwealth law, the eSafety Commissioner and their role, the National Safe Schools Framework and the Australian Student Wellbeing Framework, as well as Western Australia, and South Australia's approach (legislation, guidelines, Department of Education's policies) towards bullying and cyberbullying prevention.

Chapter 4 presents the results of the comparison between Western Australia and South Australian high school bullying and cyberbullying policies.

Chapter 5 discusses the lessons that can be drawn from South Australia's approach to bullying and cyberbullying prevention. This chapter also discusses Ontario, Canada's approach to bullying and cyberbullying prevention, specifically from Ontario's *Education Act*. This chapter

details the lessons that can be drawn from Canada for legislative responses for Western Australia. Other recommendations for Western Australia's bullying prevention are also made.

Chapter 6 provides the conclusion to the thesis which shows the importance of implementing a school cyberbullying policy with a strong focus on anti-bullying and anti-cyberbullying culture within schools.

CHAPTER TWO

Literature Review on Cyberbullying

This chapter provides background information and context as to why it is important to promote an anti-bullying and anti-cyberbullying culture within high schools. The chapter examines the prevalence and the harmful and devastating effects that cyberbullying can have on high school students.

Parts 2.1 and 2.2 defines bullying and cyberbullying, and the differences between traditional bullying and cyberbullying are identified in Part 2.3. Cyberbullying is then further explored in Part 2.4 by identifying the different types of cyberbullying, the prevalence, and the effects of cyberbullying. This part concludes with the devastating effect that cyberbullying can have on high school children. Part 2.5 examines case law to determine whether a school in Australia has a duty to protect its students from being cyberbullied under the tort of negligence. Part 2.6 explores the importance of a school policy. Part 2.7 explores the importance and need for establishing an anti-cyberbullying culture to prevent the occurrence of cyberbullying in high schools.

2.1 Definition of bullying

According to the Bullying No Way! the national definition of bullying for Australian schools states:

Bullying is an ongoing misuse of power in relationships through repeated verbal, physical and/or social behaviour that causes physical and/or psychological harm. It can

involve an individual or a group misusing their power over one or more persons.
Bullying can happen in person or online, and it can be obvious (overt) or hidden (covert).
Bullying of any form or for any reason can have long-term effects on those involved,
including bystanders.
Single incidents and conflicts or fights between equals, whether in person or online, are
not defined as bullying.²⁹

This definition was developed as a part of the National Safe Schools Framework by the Safe and Supportive School Communities Working Group.³⁰ This group comprises of all state, territory, and federal education departments, as well as the national Catholic and independent schooling representatives.³¹

Olweus defines bullying as a phenomenon in which a person is being exposed to negative actions by one or more persons, repeatedly and over time.³² Olweus describes the negative action as the infliction as well as attempting to inflict injury or discomfort onto another person. This negative action can be inflicted through physical contact, through the use of words, or exclusion from a group.³³ Olweus also described the need to highlight the imbalance in strength or an asymmetrical power relationship between the bully and the victim, when defining the term bullying.³⁴ A person who is exposed to the negative actions is often helpless and is unable to defend themselves against the bully. Olweus argues that when two persons are fighting, which are approximately of the same strength either physically or psychologically, it is not considered bullying.³⁵ He distinguishes between bullying and other forms of violence. Victims of bullying can be targeted by a single individual, or by a group made up of two to three other people.³⁶

²⁹ Bullying. No Way!, 'National definition of bullying for Australian schools' *Bullying. No Way!* (Web Page, 2019) <<https://www.srepcdbb.catholic.edu.au/wp-content/uploads/2019/01/definition-of-bullying.pdf>>.

³⁰ Ibid.

³¹ Ibid.

³² Dan A. Olweus, 'Bullying at school: basic facts and effects of a school based intervention program' (1994) 35(7) *Journal of Child Psychology and Psychiatry* 1171, 1173.

³³ Ibid.

³⁴ Ibid.

³⁵ Matthew C. Aalsma and James R. Brown, 'What is bullying?' (2008) 43(2) *Journal of Adolescent Health* 101, 101.

³⁶ Olweus (n 32).

Olweus characterised bullying as containing three elements. First, there must be aggressive behaviour or a negative action where there is an intention for committing harm. Secondly, this behaviour must be repeated and occur over time. Thirdly, there must be an imbalance of power.³⁷

Bullying can be separated into two types: direct and indirect, with verbal and physical bullying classed as direct, and social and cyberbullying as indirect.³⁸

2.2 Definition of cyberbullying

Cyberbullying can be defined as the ‘wilful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices’.³⁹ It is considered a subset of bullying that is carried out through the use of technology.⁴⁰ Cyberbullying can also be referred to as online bullying, internet bullying, or digital bullying. It can also be described as covert psychological bullying.⁴¹

There are many different definitions for cyberbullying as there is no single definition that is agreed upon in the literature. However, there is some consensus on the main elements of cyberbullying, which include: the cyberbully having an intention to harm the victim, a power imbalance exists between the cyberbully and the victim, the bullying behaviour is repetitive, and the harmful communication that is inflicted by the cyberbully is through the use of an electronic device.⁴² While anonymity is often an element of cyberbullying, it is not always the case and hence is not considered one of the main factors of cyberbullying.

³⁷ Ibid.

³⁸ Athanasia Gkiomisi et al, 'Cyberbullying Among Greek High School Adolescents' (2017) 84(5) *The Indian Journal of Pediatrics* 364, 364.

³⁹ Sameer Hinduja and Justin W Patchin, *Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying* (Corwin, 2009).

⁴⁰ Australian Institute of Health and Welfare, *Australia's children* (Report, 2020) p. 365
<<https://www.aihw.gov.au/getmedia/6af928d6-692e-4449-b915-cf2ca946982f/aihw-cws-69-print-report.pdf.aspx?inline=true>>.

⁴¹ Karen Brown, Margaret Jackson and Wanda Cassidy, 'Cyber-Bullying- Developing Policy to Direct Responses That are Equitable and Effective in Addressing This Special Form of Bullying' (2006)(57) *Canadian Journal of Educational Administration and Policy* 1, 4.

⁴² Tiffany Field, 'Cyberbullying: A narrative review' (2018) 2(1) *Journal of Addiction Therapy and Research* 10, 11.

A 2017 study exploring how adolescents aged 12-20 viewed cyberbullying elements in four countries Estonia, Italy, Germany and Turkey, found that the power imbalance between the cyberbully and the victim was viewed to be the most important element in cyberbullying cases, compared to the elements like repetition, anonymity, or intentionality.⁴³

Many times, a power imbalance exists between the bully and the victim.⁴⁴ This bully power can be expressed through technology proficiency or being in possession of content or knowledge that can be used to inflict harm on the victim.⁴⁵

2.3 Traditional bullying vs cyberbullying

The literature debates whether cyberbullying is just another type of bullying, or whether there are unique qualities that make it different. While cyberbullying can be seen as a form of bullying or as an extension of bullying, there are major differences between traditional bullying and cyberbullying.

Cyberbullying is often more challenging than traditional bullying due to the ease of continuous access of the bully to the victim through the convenience of technology; the size of the potential audience that could be reached;⁴⁶ the ease of distribution of the harmful material; the anonymity of the bully; the lack of oversight of online behaviour; the inability of the bully to see the emotional reaction of the victim; and the victim's increased sense of helplessness.⁴⁷

Cyberbullying has also been reported as having more serious consequences on the victims than victims of traditional bullying.⁴⁸ Without the face to face interaction, cyberbullying makes bullying much easier.⁴⁹

⁴³ Benedetta E. Palladino et al, 'Perceived Severity of Cyberbullying: Differences and Similarities across Four Countries' (2017) 8 *Frontiers in Psychology* 1, 7.

⁴⁴ Cyberbullying Research Center (n 1).

⁴⁵ Ibid.

⁴⁶ Ibid 27.

⁴⁷ Des Butler et al, 'School Policy Responses to Cyberbullying: An Australian Legal Perspective' (2011) 16(2) *International Journal of Law and Education* 7, 8.

⁴⁸ Field (n 42).

⁴⁹ Sameer Hinduja and Justin W Patchin, *Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying* (Corwin, 2009).

In cyberbullying, the harm is not limited to physical or verbal face to face abuse.⁵⁰ In contrast to traditional bullying, in which the bully and victim usually share the same physical space,⁵¹ the victim of cyberbullying is often unaware of who their bully is. Cyberbullies can often remain anonymous, making the act more intimidating for the victim and harder to report. Multiple cyberbullies and multiple online accounts that can sometimes be created by the same person, amplify the harm to the victim. As traditional bullying takes place face to face, there is usually a power difference between the bully and the victim. This power imbalance may be in terms of size and physical strength, attractiveness, athletic ability, popularity, social status, socio economic status or age.⁵² Studies have shown that these factors have had a positive association with bullying.⁵³ Being in a powerful position allows for and creates opportunities for bullying.⁵⁴

However, with cyberbullying, a bully can sit behind the computer and not possess these factors to bully another person online, because in the online environment, there are no visible power differences. The online space allows people who do not possess physical strength, attractiveness, athletic ability, popularity, social status, or socio economic status, to have a power advantage. As cyberbullies sit behind a screen and post harmful data, it gives the cyberbully a sense of power and control that they otherwise would not have if they were in a face-to-face situation. By creating a fake identity and by remaining anonymous when they are being aggressive to others in cyberspace, students may feel that they are immune to the risks, sanctions and illegalities when indulging in this kind of harmful behaviour.⁵⁵

While removing traditional bullying victims from the social situation, usually ends the harm,⁵⁶ in cyberbullying, as long as the victim has access to the internet, they can be targeted by the cyberbully anywhere and at any time.⁵⁷ This is one of the factors that makes cyberbullying a

⁵⁰ Aashish Srivastava, Roger Gamble and Janice Boey, 'Cyberbullying in Australia: Clarifying the Problem, Considering the Solutions' (2013) 21(1) *The International Journal of Children's Rights* 25, 27.

⁵¹ Ibid.

⁵² Enrique Chaux and Melisa Castellanos, 'Money and age in schools: Bullying and power imbalances' (2015) 41(3) *Aggressive Behavior* 280, 281.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Brown, Jackson and Cassidy (n 41).

⁵⁶ Wiseman (n 15).

⁵⁷ Maryville University, 'What is Cyberbullying? An Overview for Students, Parents and Teachers', *Maryville University* (Web Page) <<https://online.maryville.edu/blog/what-is-cyberbullying-an-overview-for-students-parents-and-teachers/>>.

much more dangerous form of bullying compared to traditional bullying. According to Srivastava, ‘internet access on mobile phones has provided young children the ability to remain constantly ‘logged-in’ on their social networking sites’.⁵⁸ This makes it difficult for victims of cyberbullying to escape their tormentors. Even the victim’s home is no longer a safe space away from cyberbullying. With traditional bullying, parents can decide to move their child to a different school to take their child away from an environment in which their child is being bullied. In cyberbullying, the option of moving to a different school⁵⁹ or any other physical space, will not assist the victim as the bully is not limited to a physical space.⁶⁰ Moreover, the physical distance and the sense of anonymity provided to the cyberbully by the use of technology, can give the cyberbully more confidence in their actions.⁶¹ Beyond the harm caused by cyberbullying, even when identified and reported, the cyberbullying content is very challenging to dispose of.⁶² A message that is posted online for one person to see, can become viral and be seen and spread by an unlimited amount of people in an instant.⁶³

2.4 Types, prevalence, and effects of cyberbullying

Types of cyberbullying

Some forms of cyberbullying include harassment, exclusion, outing, trolling, and masquerading. Harassment involves the cyberbully sending malicious or threatening online messages to the victim in a repeated manner in order to harm them.⁶⁴ Exclusion can be described as the deliberate act of leaving someone out of an online group or conversation.⁶⁵

⁵⁸ Srivastava, Gamble and Boey (n 50).

⁵⁹ Maryville University, ‘What is Cyberbullying? An Overview for Students, Parents and Teachers’, *Maryville University* (Web Page) <<https://online.maryville.edu/blog/what-is-cyberbullying-an-overview-for-students-parents-and-teachers/>>.

⁶⁰ Australian Institute of Health and Welfare (n 40).

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Securely, ‘The 10 Types of Cyberbullying’, *Securely* (Web Page, 4 October 2018) <<https://blog.securely.com/2018/10/04/the-10-types-of-cyberbullying/>>; Family Zone, ‘Cyberbullying’ *Family Zone* (Web Page, 2022) <<https://www.familyzone.com/us/cyber-bullying>>.

⁶⁵ Ibid.

Outing or doxing is done when the cyberbully openly distributes or reveals personal information about the victim without their consent.⁶⁶ This information can be pictures, videos or texts. The content is distributed without the victim's permission for the purpose of humiliating them. Image based abuse and revenge porn also fall under this category.⁶⁷ Image based abuse occurs when an intimate image is shared or threatened to be shared without the person's consent.⁶⁸ This can also be referred to as revenge porn. However, the term revenge porn is often used when an intimate image is threatened to be shared by an ex-partner.⁶⁹

Trolling refers to the deliberate act of posting insults, controversial statements or inflammatory messages to intentionally hurt the victim or to provoke a response such as an online fight.⁷⁰ Trolling does not have to be personal, such as posting a controversial statement online to a wide audience.⁷¹

Masquerading is the act of creating a fake profile or online identity for the purpose of humiliating or harassing a victim anonymously.⁷² Catfishing falls under this category, whereby the cyberbully creates a fake profile to lure their victims into an online relationship with them. The purpose of catfishing is either to entertain the cyberbully or to defraud and scam the victim.⁷³

As people are more willing to do and say things online that they otherwise would not do or say in the real world, online behaviour can be made worse due to the user's disinhibition and disconnect in the online environment compared to the real world.⁷⁴ This disinhibition increases 'any behaviour that is characterised by an apparent reduction in concerns for self-presentation and the judgement of others'⁷⁵ and thus leading to an increase in cyberbullying incidences.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ eSafety Commissioner, 'Image-based abuse', *eSafety Commissioner* (Web Page) <<https://www.esafety.gov.au/key-issues/image-based-abuse>>.

⁶⁹ Witzleb and Crofts (n 7).

⁷⁰ Securely (n 64).

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Brown, Jackson and Cassidy (n 41).

⁷⁵ Nancy Willard, 'Off-Campus, Harmful Online Student Speech' (2008) 2(1) *Journal of School Violence* 65, 74.

Prevalence of cyberbullying

During 2019-2020, the eSafety Commissioner received 690 complaints about serious cyberbullying that targeted Australian children.⁷⁶ The number of complaints has significantly increased when compared to previous years, with 531 complaints in 2018-2019,⁷⁷ 409 complaints in 2017-2018,⁷⁸ and 305 complaints in 2016-2017.⁷⁹

Out of the 690 complaints made to the eSafety Commissioner in 2019, 76% were made by children aged 13 to 17 years old.⁸⁰ The most common complaint described cyberbullying materials containing nasty comments/serious name calling. Other categories of complaints include offensive/upsetting pictures and videos, fake accounts/impersonations, threats of violence, unwanted contact, sexting/revenge porn, hacking of social media accounts and hate pages.⁸¹

The prevalence of cyberbullying has increased among students in high schools. In a study conducted in the United States, 17 high schools in Boston were surveyed over a period of six years from 2006 to 2012 to determine the trends in bullying and cyberbullying in school students. The results of their study found that the occurrence of cyberbullying had increased from 15% in 2006, to 21% in 2012, whereas with traditional schoolyard bullying, it had decreased slightly from 26% in 2006 to 23% in 2012.⁸² In 2006, traditional schoolyard bullying was significantly higher compared to cyberbullying.

⁷⁶ Australian Communications and Media Authority and Office of the eSafety Commissioner, *Annual Reports 2019-20* (Report, 2020) p. 203 <<https://www.esafety.gov.au/sites/default/files/2020-10/ACMA%20and%20eSafety%20annual%20report%202019-20.pdf>>.

⁷⁷ Australian Communications and Media Authority and Office of the eSafety Commissioner, *Annual Reports 2018-19* (Report, 2019) p. 197 <https://www.esafety.gov.au/sites/default/files/2019-10/ACMA_and_eSafety_annual_reports_2018_19.pdf>.

⁷⁸ Australian Communications and Media Authority and Office of the eSafety Commissioner, *Annual Reports 2017-18* (Report, 2018) p. 114 <https://www.esafety.gov.au/sites/default/files/2019-07/ACMA_OeSC_AR2017_18.pdf>.

⁷⁹ Australian Communications and Media Authority and Office of the eSafety Commissioner, *Annual Reports 2016-17* (Report, 2017) p. 109 <https://www.esafety.gov.au/sites/default/files/2019-07/ACMA_OeSC_AR2016_17.pdf>.

⁸⁰ Australian Communications and Media Authority and Office of the eSafety Commissioner (n 73).

⁸¹ *Ibid.*

⁸² Shari Kessel Schneider, Lydia O'Donnell and Erin Smith, 'Trends in Cyberbullying and School Bullying Victimization in a Regional Census of High School Students, 2006-2012' (2015) 85(9) *Journal of School Health* 611, 613.

From their study, it was also interesting to see that cyberbullying amongst girls had increased significantly from 17% in 2006, to 27% in 2012, whereas compared to the boys, it had increased slightly from 12% in 2006 to 15% in 2012.⁸³ With traditional schoolyard bullying, there was no increase among the girls from 2006 to 2012 staying at 26%, however with the boys, there was a decrease with 25% in 2006 and 18% in 2012.⁸⁴ Other studies have supported the notion that girls were more likely to be victims of cyberbullying, with their studies demonstrating that girls were twice as likely to be victims of cyberbullying in comparison to boys, and boys being more exposed to traditional schoolyard bullying compared to girls.⁸⁵ Cyberbullying victimisation was also found to be more commonly reported amongst sexual minorities compared to heterosexual youth, with victimisation reports being almost twice as high.⁸⁶

Their study also discovered that while cyberbullying had increased over time, over the six year period, the increase had also occurred within all year levels at school. In the grade 9 year level, cyberbullying had increased from 16% in 2006 to 23% in 2012.⁸⁷ Compared to the grade 12 year level, cyberbullying had also increased from 12% in 2006 to 19% in 2012.⁸⁸ When surveyed every two years during the six year period, cyberbullying victimisation was found to be most commonly reported in grades 9 and 10 compared to grades 11 and 12. Compared to traditional schoolyard bullying, bullying had decreased in among grades 9 to 11 over the six year period, with the greatest significant decrease occurring in the grade 9 year level with 33% in 2006 to 25% in 2012. However, traditional bullying had increased slightly in the grade 12 year level from 17% in 2006 to 19% in 2012.⁸⁹ This study shows that not only has cyberbullying increased over the years, but that cyberbullying within the year groups has also increased. Although this study is over 10 years old, it is important to demonstrate the rise in cyberbullying over the 6 year period.

⁸³ Ibid 614.

⁸⁴ Ibid.

⁸⁵ Erick Messias, Kristi Kindrick and Juan Castro, 'School bullying, cyberbullying, or both: correlates of teen suicidality in the 2011 CDC Youth Risk Behavior Survey' (2014) 55(5) *Comprehensive Psychiatry* 1063, 1066.

⁸⁶ Schneider, O'Donnell and Smith (n 82).

⁸⁷ Ibid 614.

⁸⁸ Ibid.

⁸⁹ Ibid.

In 2017, another study conducted in the United Kingdom, 40 high schools were surveyed on bullying and cyberbullying victimisations at the individual level and school level. At the school level, the school type and school quality measures were used to determine rates of bullying and cyberbullying victimisation.⁹⁰ This study found that with school quality, the schools that were rated ‘Good’ had reported higher levels of bullying compared to schools that were rated ‘Outstanding’.⁹¹ Schools that were given an ‘Outstanding’ rating by the Office for Standards in Education – a statutory body in England, suggest that those schools perform well with regard to their leadership and management, which in turn suggests that the school climate protects students against bullying.⁹² The type of school had also influenced the rate of bullying and cyberbullying victimisation. Their study found that in voluntary aided schools (such as faith schools) the students were less likely to be bullied compared to the mainstream state schools.⁹³ They suggested that the school’s ethos and culture are protective elements against bullying.⁹⁴ They had also suggested that students from families that put their children in faith schools are more resilient to bullying, or bully less.⁹⁵ However with cyberbullying, it was found to be more common among the community schools (where the premises and funding are provided by local authorities) and foundation schools (school owned but funded by local authorities) compared to mainstream schools (autonomous schools that have funding from the central government).⁹⁶ In a similar study, they argue that schools that have a larger age difference among the students as well as a large socio economic difference, were found to have higher levels of bullying perpetration and victimisation when compared to schools where the age and socio economic difference was not as large.⁹⁷

In 2017, a Greek study investigated the presence of cyberbullying among high school students in public, private and experimental schools. In this study, 62% of the participants had reported having experienced cyberbullying at least once by electronic means. Public school students were

⁹⁰ Leonardo Bevilacqua et al, 'The role of family and school-level factors in bullying and cyberbullying: a cross-sectional study' (2017) 17(1) *BMC Pediatrics* 160, 163.

⁹¹ *Ibid* 168.

⁹² *Ibid*.

⁹³ *Ibid*.

⁹⁴ *Ibid*.

⁹⁵ *Ibid*.

⁹⁶ *Ibid*.

⁹⁷ Chaux and Castellanos (n 52).

also more likely than the other school types to be victims of cyberbullying, especially through the use of mobile phones with 71% compared to 57%.⁹⁸ The researchers suggest that public school students were more vulnerable to cyberbullying or cyberattacks online because of their higher tendency to share their personal information on the internet.⁹⁹ In over 40% of the bullying cases from this study, the bully was a stranger to the victim.¹⁰⁰ The researchers suggest that schools need to provide courses, programs, lectures, and presentations on cyberbullying as well as the risks that are associated with internet usage to minimise the risk of cyberbullying.¹⁰¹ Teaching students about cyber etiquette could reduce the risk of disclosing private information on the internet and thus could reduce the risk of cyberbullying and cyber-attacks, but they found this response did not always seem to aid the victim of the attacks.¹⁰²

These studies suggest that the quality of the school and the school type impacts the number of bullying and cyberbullying cases reported in the school. The higher the level of quality of the school is impacted by the organisational and management factors within the school, which in turn influences the students' behaviours. The literature has shown that the prevalence of cyberbullying can vary significantly depending on gender, sexual orientation, the quality of the school, the type of school, the school year levels, and the country.

Children who are victims of bullying or cyberbullying, witness it, or intervene, can all experience the physical and emotional consequences that come with bullying.¹⁰³ The victims of bullying and cyberbullying have been shown to have poor academic performance at school, difficulty transitioning through life such as adjusting from primary school to secondary school, they are more likely to have anxiety and depression and other mental health concerns, as well as have a high risk of self-inflicted injuries and suicide.¹⁰⁴

⁹⁸ Gkiomisi et al (n 38) 365.

⁹⁹ Ibid 367.

¹⁰⁰ Ibid 365.

¹⁰¹ Ibid 367.

¹⁰² Ibid.

¹⁰³ Australian Institute of Health and Welfare (n 40).

¹⁰⁴ Ibid.

Effects of cyberbullying

Cyberbullying can contribute to poor self-esteem, stress, depression, anxiety, substance abuse, eating disorder, low academic performance, school dropouts, hostility towards others, internalising and externalising behaviour, self-harm and suicidal behaviour, which include suicide ideation, suicide plans and suicide attempts.¹⁰⁵

The literature has shown that cyberbullying victimisation is related to high levels of loneliness, greater social isolation, as well as suicide ideation.¹⁰⁶ Suicide ideation refers to when ‘an individual repeatedly thinks about, plans, and desires to commit suicide’.¹⁰⁷ Adolescents who are victims of cyberbullying were more likely to think about suicide as an escape from harm when compared to victims of traditional bullying.¹⁰⁸ Suicide ideation is a predictor of future suicide attempts and suicidal behaviour in victims of cyberbullying.¹⁰⁹

A research study conducted in Spain sought to analyse the relationship between cyber victimisation and suicide ideations through perceived stress, loneliness, depressive symptomology, and psychological distress.¹¹⁰ Each of these variables was rated on a scale. The results suggest that cyber victimisation has a direct effect on suicide ideation. This relationship was found to be higher than traditional schoolyard bullying.¹¹¹ The results also showed that there is an indirect effect of cyber victimisation to suicide ideation through perceived stress, loneliness, depressive symptomology, and psychological distress. In their study, psychological distress was found to have high relation to cyberbullying victimisation.¹¹²

Feelings of desperation, stress, loneliness, helplessness, weakness, unable to escape or resolve the issue are some of the negative impacts that a victim can feel due to cyberbullying.¹¹³ Feelings

¹⁰⁵ Chaux and Castellanos (n 52); Ann John et al, 'Self-Harm, Suicidal Behaviours, and Cyberbullying in Children and Young People: Systematic Review' (2018) 20(4) *Journal of Medical Internet Research* 129, 129.

¹⁰⁶ Begoña Iranzo et al, 'Cyberbullying, Psychosocial Adjustment, and Suicidal Ideation in Adolescence' (2019) 28(2) *Psychosocial Intervention* 75, 76.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid 75.

¹¹¹ Ibid 79.

¹¹² Ibid.

¹¹³ Ibid.

of loneliness were also found to be closely related to cyber victimisation. Social isolation and feelings of loneliness can be brought about through rejection by peers.¹¹⁴ Victims of cyberbullying have reported 'having fewer friendships, more emotional and peer relationship problems, and lower school attachment,'¹¹⁵ and are more likely to lose trust in others.¹¹⁶ Feeling like you belong is important during the adolescent stage. The results of the Spanish study showed that loneliness has the highest effect on suicide ideation for adolescent cyberbullying victims¹¹⁷ however, the feeling of hopelessness had most influenced the progression from suicide ideation to the first suicide attempt, to then committing suicide.¹¹⁸

Involvement in cyberbullying was also found to be a strong predictor of suicide ideation, more so than for depressive symptomologies.¹¹⁹ Researchers suggest that this could be due to the public nature of the online platform, in addition to the anonymity and lack of control over the situation.¹²⁰ The feeling of hopelessness could heighten the connection between suicide ideation and cyberbullying. Youths who identified as being both perpetrators and victims of cyberbullying experienced the greatest risk for suicide ideation.¹²¹ However, another study has found that the relationship between cyberbullying and suicidal behaviour was greater in victims of cyberbullying compared to perpetrators.¹²²

There is also a significant relationship between depression and adolescent victims of cyberbullying. When asked about the negative effects of cyberbullying, 93% of cyber victims in the study had reported that cyberbullying had made them feel sad, hopeless, powerless, and depressed.¹²³ 58% reported that cyberbullying made them afraid to go to school, while others stated that they were suspicious of everyone around them as they did not know who their

¹¹⁴ Ibid.

¹¹⁵ Charisse L Nixon, 'Current perspectives: the impact of cyberbullying on adolescent health' (2014) 5 *Adolescent Health, Medicine and Therapeutics* 143, 145.

¹¹⁶ Ibid.

¹¹⁷ Iranzo et al (n 106).

¹¹⁸ Ibid.

¹¹⁹ Nixon (n 115).

¹²⁰ Ibid.

¹²¹ Rina A. Bonanno and Shelley Hymel, 'Cyber bullying and internalizing difficulties: above and beyond the impact of traditional forms of bullying' (2013) 42(5) *Journal of Youth and Adolescence* 685, 694.

¹²² Nixon (n 115).

¹²³ Juliana Raskauskas and Ann D. Stoltz, 'Involvement in traditional and electronic bullying among adolescents' (2007) 43(3) *Developmental Psychology* 564, 569.

cyberbullies were.¹²⁴ Related studies reported that victims of cyberbullying experienced emotional distress and feared for their safety,¹²⁵ while other studies report victims feeling angry, embarrassed, upset and worried.¹²⁶

Cyberbullies and cyber victims were found to experience higher levels of psychological and physical health concerns. Physical health concerns include stomach pains, sleep problems, headaches, tension, bedwetting, fatigue, poor appetite, skin problems, and irritability.¹²⁷ A Swedish study found there was no statistically significant difference in psychosomatic problems between cyberbullying and traditional bullying.¹²⁸ However their study did find that psychosomatic health problems were more common in students involved in bullying compared to those who had no involvement with bullying.¹²⁹ Substance use particularly drugs and alcohol as well as violent behaviour are more common in adolescents who are cyberbullied.¹³⁰ A study conducted on the impact of cyberbullying on substance use discovered that cyberbullying victimisation increased the likelihood of substance use and that marijuana use and binge drinking was 2.5 times more likely to occur.¹³¹ Research has suggested that resorting to substance use and self-injurious behaviours may occur as a coping mechanism to deal with the physical and psychological pain associated with cyberbullying.¹³²

One study examined whether different forms of electronic victimisation led to different psychological outcomes. The results showed that experiences with computer based victimisation, such as online posts, chatrooms, pictures, and emails, evoked more negative effects on the victim compared to phone based victimisation, such as harm through text messages and phone calls.¹³³ Computer based victimisation was related to higher rates of social stress, anxiety, depression,

¹²⁴ Ibid 570.

¹²⁵ Nixon (n 115).

¹²⁶ Ibid.

¹²⁷ Robin M. Kowalski and Susan P. Limber, 'Psychological, physical, and academic correlates of cyberbullying and traditional bullying' (2013) 53(1) *Journal of Adolescent Health* 13, 14.

¹²⁸ Linda Beckman, Curt Hagquist and Lisa Hellström, 'Does the association with psychosomatic health problems differ between cyberbullying and traditional bullying?' (2012) 17(3-4) *Emotional and Behavioural Difficulties* 421, 431.

¹²⁹ Ibid 432.

¹³⁰ Nixon (n 115).

¹³¹ Deborah Goebert et al, 'The impact of cyberbullying on substance use and mental health in a multiethnic sample' (2011) 15(8) *Maternal and Child Health Journal* volume 1282, 1284.

¹³² Ibid 1285.

¹³³ Nixon (n 115).

and low self-esteem.¹³⁴ This could be explained by the fact that the online posts are public and can be seen by an infinite number of people, leaving the victim unable to escape or hide from it.¹³⁵ People who cyberbully through computer based platforms are usually hidden behind a fake profile, including their name and email, which gives them full anonymity.¹³⁶ The pervasiveness of the online posts can also encourage others to continue the bullying behaviour. In comparison to phone based victimisation, the victims can hide messages from others and thus feel as though they can limit the number of people who know about the online bullying as well as reducing the risk of further victimisation.¹³⁷ Phone based victimisation is also different to computer based as calls and texts leave an identifiable number linked to the perpetrator. This also suggests that the bully may be close to or known to the victim to have the victim's phone number.¹³⁸ While cyberbullying can only threaten physical violence, repeated verbal and psychological bullying can cause negative long term effects.¹³⁹

The relationship between cyberbullying victimisation and perceived stress could be explained by the victim's high level of alertness due to the nature of cyberbullying.¹⁴⁰ The inability of the victim to escape the torment of cyberbullying can cause high levels of stress on the victim.¹⁴¹ Literature has shown victims of cyberbullying produce high levels of cortisol (the stress hormone),¹⁴² while others state that cyberbullying has been conceptualised as a stressor.¹⁴³ Cyberbullying has also been considered more stressful compared to traditional bullying, in part due to the anonymity of the online bully.¹⁴⁴ As cyberbullying victims are often unaware of the identities of their online bullies, it can contribute to the victim's increased levels of fear as well

¹³⁴ Bridget K. Fredstrom, Ryan E. Adams and Rich Gilman, 'Electronic and school-based victimization: unique contexts for adjustment difficulties during adolescence' (2011) 40(4) *Journal of Youth and Adolescence* 405, 413.

¹³⁵ Ibid.

¹³⁶ Ibid 407.

¹³⁷ Ibid 413.

¹³⁸ Ibid 407.

¹³⁹ Philippa Reid, Jeremy Monsen, and Ian Rivers, 'Psychology's contribution to understanding and managing bullying within schools' (2004) 20(3) *Educational Psychology in Practice* 241, 241.

¹⁴⁰ Irazzo et al (n 106).

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Nixon (n 115).

¹⁴⁴ Ibid.

as stress.¹⁴⁵ Perpetrators of cyberbullying can be anyone, even the victim's closest friends, and family members.¹⁴⁶

According to the Australian Bureau of Statistics, there were 96 suicides committed by children aged 5 to 17 years old in 2019.¹⁴⁷ Suicide is the leading cause of death for children in Australia. 80% of these child suicides occurred between the ages of 15 and 17 years.¹⁴⁸ Children aged 5 to 17 years old are school aged children. While it is unknown how many of these deaths are caused by cyberbullying, in order to stop the number of deaths caused by cyberbullying from increasing, schools should provide awareness of programs and policies in schools specifically for helping victims of cyberbullying can decrease the feeling of hopelessness and thus can be the difference between suicide ideation and their first suicide attempt.

Suicide cases caused by cyberbullying

Several suicide cases as a result of cyberbullying have been reported globally. Allem Halkic (17) had committed suicide after being cyberbullied by a former friend, Shane Gerada. Allem had received threats of physical violence as well as verbal attacks from Shane after he had told a mutual friend of the comments Shane had made about her.¹⁴⁹ As the cyberbullying escalated, he received hundreds of threatening and aggressive online messages.¹⁵⁰ After Allem committed suicide, Shane reflected on his actions and on what happened, admitting 'I did not realise the effect of my words'.¹⁵¹

Ryan Halligan (13) committed suicide after being bullied at school as well as experiencing cyberbullying. Rumours had spread around the school and online that Ryan was gay after he had told a friend about a medical examination he went through.¹⁵² A girl from his school had befriended him online for the sole purpose of gaining personal information about him so she

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Australian Bureau of Statistics, *Causes of Death, Australia, 2019* (Catalogue No 3303.0, 31 March 2021).

¹⁴⁸ Ibid.

¹⁴⁹ Selma Milovanovic, 'Man avoids jail in first cyberbullying case' *The Age* (Web Page, 9 April 2010)

<<https://www.theage.com.au/national/victoria/man-avoids-jail-in-first-cyber-bullying-case-20100408-rv3v.html>>.

¹⁵⁰ Amy Dwyer and Patricia Easteal, 'Cyber Bullying in Australian Schools: The question of negligence and liability' (2013) 38(2) *Alternative Law Journal* 92, 92.

¹⁵¹ Milovanovic (n 149).

¹⁵² Wiseman (n 15).

could share it with other students at school to further embarrass him. When the bullying and cyberbullying got worse, Ryan discussed his plans to commit suicide with an online pen pal, who had encouraged him to end his life.¹⁵³ It was later found out that the identity of his pen pal was Ryan's old childhood friend.¹⁵⁴

Amanda Todd (15) committed suicide after being cyberbullied. She was convinced by a stranger to flash her breasts over a webcam stream. The man then threatened to send her naked photo to her friends unless she put on another 'show' for him.¹⁵⁵ When she refused to do so, he created a Facebook account using her topless photo as the profile picture and friended the students at her new school.¹⁵⁶ The cyberbullying continued, even when Amanda moved to another school. After getting verbally and physically assaulted at school, she attempted suicide by drinking bleach.¹⁵⁷ Amanda had survived, only to discover that people were sending hateful and abusive messages all over her Facebook about her failed suicide attempt, stating that she should have tried harder to kill herself.¹⁵⁸ Even after her family moved again to escape the torment, the bullying and cyberbullying continued to follow her until she committed suicide. She was reported to have severe depression, anxiety, and panic disorders and had also self harmed.¹⁵⁹

Megan Meier (13) committed suicide after being cyberbullied. Megan had become MySpace friends with a boy she had never met, named Josh Evans.¹⁶⁰ After talking daily, she had received a message from Josh stating that he did not want to be friends with her anymore because he had heard that she was not very nice to her friends.¹⁶¹ Josh continued to send her troubling messages

¹⁵³ Ibid.

¹⁵⁴ Academic, 'Suicide of Ryan Halligan' *Academic Dictionaries and Encyclopedias* (Web Page, 2010) <<https://en-academic.com/dic.nsf/enwiki/11625772>>.

¹⁵⁵ Michelle Dean, 'The Story of Amanda Todd' *The New Yorker* (Web Page, 18 October 2012) <<https://www.newyorker.com/culture/culture-desk/the-story-of-amanda-todd>>.

¹⁵⁶ CBC News, 'The Sextortion of Amanda Todd – The Fifth Estate', *YouTube* (Web Video, 15 November 2013) <<https://www.youtube.com/watch?v=uQRnSIa-qQM>>.

¹⁵⁷ Ibid.

¹⁵⁸ Justin W Patchin, 'Amanda Todd, Cyberbullying, and Suicide', *Cyberbullying Research Center* (Web Page) <<https://cyberbullying.org/amanda-todd-cyberbullying-and-suicide>>

¹⁵⁹ TheSomebodytoknow, 'My story: Struggling, bullying, suicide, self harm' *Youtube* (Web Video, 8 Sept 2012) <<https://www.youtube.com/watch?v=vOHXGNx-E7E>>.

¹⁶⁰ Alissa Phillips, 'Cyberbullying and the Tragic Case of Megan Meier', *Alissa Phillips* (Web Page, 23 March 2019) <<https://medium.com/@alissaphillips/cyberbullying-and-the-tragic-case-of-megan-meier-9bb9d3611094>>.

¹⁶¹ Megan Meier Foundation, 'Megan's Story', *Megan Meier Foundation* (Web Page, 2022) <https://www.meganmeierfoundation.org/megans-story#utm_source=google&utm_medium=cpc&utm_campaign=MMF%20-%20KLC&utm_content=Megan>.

and shared some of their messages with other people. Minutes later, there were bulletin posts on MySpace calling Megan fat and a slut.¹⁶² The last messages she was thought to have read included ‘everybody hates you’ and ‘the world would be a better place without you’.¹⁶³ Megan committed suicide that night. It was later discovered that Josh was a fake account made and run by three different people: one of Megan’s former friends, her mother, and an employee of the mother.¹⁶⁴

Tyler Clementi (18) committed suicide after being cyberbullied. Tyler had recently come out as gay and was embracing new experiences while also starting at university.¹⁶⁵ One night, Tyler had a date and asked his roommate, Ravi for privacy.¹⁶⁶ Without Tyler’s knowledge or consent, Ravi had left his computer webcam on in the room which had captured Tyler and his date kissing.¹⁶⁷ Multiple other students viewed the live webcam footage as it was broadcasted online. Tyler found out that Ravi had posted on Twitter that there would be another live viewing. He had also learnt that he was getting mocked and ridiculed online because of his sexuality by those who watched the Livestream.¹⁶⁸ He committed suicide a few days later.

Libby Bell (13) committed suicide after suffering from cyberbullying. According to Libby’s parents, she had been cyberbullied for years over social networking sites Facebook, Instagram, and Snapchat.¹⁶⁹ Libby had also suffered physical abuse as there was a video showing a girl pouring a drink over her while she was sitting at a fast-food restaurant.¹⁷⁰ The video went viral which intensified the online bullying she was already receiving. South Australia’s Police Commissioner Grant Stevens stated that the State Government should consider bullying specific legislation to ease the prosecution of long running harassment.¹⁷¹ This led the Australian

¹⁶² Ibid.

¹⁶³ Phillips (n 160).

¹⁶⁴ Ibid.

¹⁶⁵ Rutgers, ‘Tyler’s Story’ *Rutgers* (Web Page) < <https://nbdiversity.rutgers.edu/clementi-center/tylers-story>>.

¹⁶⁶ Ibid.

¹⁶⁷ Tyler Clementi Foundation, ‘Tyler Clementi’s Story’ *Tyler Clementi Foundation* (Web Page, 2022) <<https://tylerclementi.org/tylers-story/>>.

¹⁶⁸ Ibid.

¹⁶⁹ Elizabeth Henson, ‘Parents of victim Libby Bell back new law to put bullies behind bars’ *The Advertiser* (Web Page, 6 September 2017) <<https://www.adelaidenow.com.au/news/south-australia/parents-of-libby-bell-back-new-law-to-put-bullies-behind-bars/news-story/56d6ff8169cb0ccf1f8e519e9d7a7938>>.

¹⁷⁰ Ibid.

¹⁷¹ The Advertiser, ‘SA Police Commissioner may consider anti-bullying laws in wake of death of teenager Libby Bell’ *The Advertiser* (Web Page, 5 September 2017) <<https://www.adelaidenow.com.au/news/law-order/sa-police->

Conservatives state MP Dennis Hood to introduce bullying specific legislation in South Australia.¹⁷² Libby's Law was widely petitioned in South Australia and had led to the introduction of the *Children and Young People (Safety) Act 2017*. This is further explored in Chapter 3.

Cassidy Trevan (15) committed suicide after being bullied and cyberbullied. She had experienced relentless bullying at school which had made her too scared to leave her house.¹⁷³ Her mother mentioned that she had stopped going to school because of the bullying.¹⁷⁴ When Cassidy returned to school, the girls who had bullied her incessantly, apologised and told her that they wanted to be her friend and invited her to a local festival.¹⁷⁵ Later that day, it was alleged that two girls from her school had lured her to a home where she was gang raped by a group of older boys who had also attended their school.¹⁷⁶ The bullying continued, even when she changed school as well as moved house.¹⁷⁷ Cassidy and her mother had reported the rape to the school, stating that the school had an anti-bullying policy and a zero tolerance for bullying. Even after the police had contacted the school, the school did nothing.¹⁷⁸ According to Victoria Police, 'detectives from its Sexual Offence and Child Abuse Investigation Team had spoken with Cassidy more than 20 times'.¹⁷⁹ She had never filed an official statement to the police because she feared retaliation from her bullies.¹⁸⁰ Cassidy's bullies and rapists were never charged by the police.¹⁸¹ In letters found after she had died, detailed her beliefs that she would never escape her

commissioner-may-consider-antibullying-laws-in-wake-of-death-of-teenager-libby-bell/news-story/369dd72aeeb8ca1bd4a7fc6f3abdc08>.

¹⁷² Caitlin Bishop, 'A teen suicide and a schoolgirl stabbing. Two separate tragedies in Adelaide schools' *MamaMia* (Web Page, 8 September 2017) <<https://www.mamamia.com.au/schoolyard-stabbing-adelaide/>>.

¹⁷³ Emma Reynolds, 'Silence over 'bullied and gang-raped' Cassidy's death' *news.com.au* (Web Page, 18 February 2017) <<https://www.news.com.au/lifestyle/real-life/true-stories/silence-over-bullied-and-gangraped-cassidys-death/news-story/06d4ba000ddfa76e8967841cd28c8997>>.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Brittany Chain, 'For a short while I became an alcoholic: Mother of Cassidy Trevan says a part of her "died too" when her daughter committed suicide after being "gang-raped" by bullies' *Daily Mail Australia* (Web Page, 17 June 2019) <<https://www.dailymail.co.uk/news/article-7148005/Mother-teen-Cassidy-Trean-took-life-gang-raped-bullies-died-daughters-tragic-death.html>>.

¹⁷⁷ Ibid.

¹⁷⁸ Emily McPherson, 'Mum discovers heartbreaking note years after Victorian teen Cassidy Trevan's death' *9News* (Web Page, 4 April 2019) <<https://www.9news.com.au/national/victoria-news-mum-discovers-heartbreaking-note-years-after-teen-cassidy-trevans-death/34b1a51b-d0e0-44c3-b5eb-447ea1fa0540>>.

¹⁷⁹ Ibid.

¹⁸⁰ Chain (n 176).

¹⁸¹ McPherson (n 178).

bullies and her anxiety.¹⁸² She also mentions the nightmares she's had over the rape.¹⁸³ She also states that she continued to get messages from students she's never met contacting her on Facebook calling her a slut.¹⁸⁴ Her mother states that Cassidy had 'suffered flashbacks of the crime, nightmares, insomnia, separation anxiety, panic attacks, PTSD and worsening mental illness'.¹⁸⁵

Other youths who have tragically lost their lives to cyberbullying are Jessica Logan, Hope Witsell, Ashlynn Conner, Hailee Lamberth, Kenneth Weishuhn, Angel Green, David Molak, Amy Jayne Everett (Dolly), Jessica Cleland, Jessica Tolhurst, Mallory Grossman, Brandy Vela, and many more who are not reported by the media. There are also many more youths who suffer depressive symptoms that come from cyberbullying.

In most of the cases, there is no information available about whether the schools were aware of the bullying and cyberbullying incidents that ultimately resulted in the deaths of these young people. As cyberbullying is most prevalent in school aged children, and school is where they spend a majority of their time socialising, the implementation of an anti-bullying or anti-cyberbullying school policy is needed to ensure a safe environment that protects the students from harm that can occur through cyberbullying. As suicide is the leading cause of death for school aged children, schools need to be aware of their duty towards their students as well as the negative effects of cyberbullying.

2.5 Duty of schools in Australia under the tort of negligence – Cases explored

As cyberbullying usually occurs outside of school hours, it can become difficult to determine whether the school has a duty to protect its students. To establish whether the school has a duty towards its students for cyberbullying cases of negligence, four elements need to be met.

¹⁸² Chain (n 176).

¹⁸³ McPherson (n 178).

¹⁸⁴ Chain (n 176).

¹⁸⁵ LMA, '15-year-old who was gang raped by bullies left this heartbreaking letter before committing suicide' *boredpanda* (Web Page, 2017) <https://www.boredpanda.com/teen-girl-wrote-note-raped-school-bullies-cassidy-trevar/?page_num=2&utm_source=google&utm_medium=organic&utm_campaign=organic>.

The first element that needs to be established is that the school has a duty of care to the student.¹⁸⁶ The second element must establish that the school did not meet the standard of care that is expected of a reasonable person in the same circumstances.¹⁸⁷ It must be shown that the school had breached their duty of care. The third element must establish that the student under the school's care, had suffered an injury or damage that was reasonably foreseeable.¹⁸⁸ The last element that needs to be established is the causal relationship between the damage and the breach.¹⁸⁹ It must be shown that the injury or damage that was caused to the student was because of the breach of the school's duty.¹⁹⁰

In Australia, the school owes to the students a 'non-delegable duty to ensure that reasonable care is taken of them while they are on school premises'.¹⁹¹ The liability of a school for failing to prevent a student from being bullied by another student has been addressed in common law in the case of *Commonwealth v Introvigne* (1982).¹⁹² This duty is non delegable in nature because students are vulnerable and depend 'on the school authority to ensure that a safe environment is provided'.¹⁹³

In public/state schools, the duty of care derives from the government and their system of compulsory education, whereas in private schools, the duty arises through the contract formed between the school and the student's parents.¹⁹⁴ It has been suggested that a school's duty of care arises when the students are in the care of the school and its teachers, and are no longer under the control, protection and care of their parents.¹⁹⁵ It is generally suggested that if there is a circumstance that gives rise to a relationship between the school and the student, then there is a duty to be owed.¹⁹⁶

¹⁸⁶ Dwyer and Eastal (n 150).

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Desmond A Butler, 'Liability for Bullying at Schools in Australia: Lessons Still to be Learnt' (2006) 7(4) *Education Law Journal* 1, 5.

¹⁹² Ibid.

¹⁹³ Pelletier et al (n 14).

¹⁹⁴ Butler (n 191).

¹⁹⁵ Dwyer and Eastal (n 150); Pelletier et al (n 14).

¹⁹⁶ Pelletier et al (n 14).

Under the tort of negligence, ‘a school owes its students a duty of reasonable care while they are on the school premises during school hours’.¹⁹⁷ As there is a special relationship of care between the school and the student,¹⁹⁸ it gives rise to a duty in which the school must take reasonable care to protect the students from third party wrongdoings.¹⁹⁹ Because of this relationship between school and student, schools can be liable if they fail to protect the students from harm.²⁰⁰ The scope of this duty becomes problematic when looking at case law. Case law shows that the duty of the school is not limited to activities that occur on school grounds and during school hours.

In the case of *Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman*, a 12 year old boy was injured outside of the school property while he was waiting at the bus stop.²⁰¹ The bus stop was located around 400 meters away from the school grounds.²⁰² It was held that the school was negligent and had breached their duty of care to the student, due to their knowledge that students from their school and other schools had routinely used that bus stop.²⁰³ Because of this knowledge, the school ought to have known that mischief was likely to occur when students of different ages and those from different schools mix together without adequate supervision.²⁰⁴ As the bus stop was right outside of the school grounds, the school has the ‘capacity to influence what happens immediately outside the school premises’.²⁰⁵ The further away the student is from the school grounds, the less likely a duty will arise.²⁰⁶ However, if the school is aware of particular risks to their students, such as if they are aware of bullying by older students on the bus, it was suggested that there ‘may be a duty to take preventative steps or warn parents of the risk, even when it arises outside school grounds and outside of school hours’.²⁰⁷ This suggests that there is an extension of the schools duty of care beyond the school grounds.

¹⁹⁷ Witzleb and Crofts (n 7).

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Dwyer and Easteal (n 150); *Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman* (1996) Aust Torts Report 81-339.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Pelletier et al (n 14).

²⁰⁶ Ibid 105.

²⁰⁷ Ibid 106.

Scope of duty

In the case of *Graham v The State of New South Wales*, a 12 year old student with poor eye sight and balance was injured while crossing a road on her way home from school.²⁰⁸ Her mother usually walked home with her, but when she was not available to do so, she asked the school to provide transport.²⁰⁹ The school notified the mother that they declined to do so. When the mother sued the school authority, she relied on the *Koffman* case arguing that the school owed her daughter a duty to transport her home due to the fact the school was aware of her difficulties.²¹⁰ The Court held that the school does have a duty to protect the student whilst at school, and also had a duty to inform the parent that transport was not available, but that the school did not have a duty to ‘go further to take precautions to escort a pupil home’.²¹¹ The limit to the schools duty of care is that it does not extend as far as to what is unreasonable in the circumstances.²¹²

The school’s duty of care will be heightened when the school has knowledge, if they are aware of the vulnerabilities and risk of harm to the students, when they have control over a particular situation, and when they have encouraged the students to participate in that activity.²¹³

Breach of duty

In the case of *Oyston v St Patrick’s College*, the school was liable to one of their students as they had failed to adequately respond to the complaints made by the student about being bullied.²¹⁴ It was discovered that the school knew of the student’s vulnerabilities to anxiety, panic attacks and depressive episodes, as well as the physical bullying that she had to endure over the years from the other students.²¹⁵ At this school, it was found that they had two anti-bullying policies in place. One of the policies was aimed at the students conduct, and the other was a protocol on how to deal with bullying allegations.²¹⁶ In this protocol, it required that the complaints of bullying are to be investigated, and also included a procedure on how to handle the perpetrators

²⁰⁸ *Graham v The State of New South Wales* [2001] NSWCA 248.

²⁰⁹ Pelletier et al (n 14).

²¹⁰ Ibid 106.

²¹¹ Ibid 108.

²¹² Ibid 109.

²¹³ Ibid 98.

²¹⁴ *Oyston v St Patrick’s College* (No 2) [2013] NSWCA 310, [4].

²¹⁵ Ibid.

²¹⁶ Ibid.

of the bullying, depending on their frequency of such conduct.²¹⁷ The student claimed that the teacher responsible for investigating her complaint did not give a reasonable response to the amount of harm that she had endured.²¹⁸ When the frequency of the bullying got to a point that it was occurring almost daily, she would repeatedly complain to various staff members, and would receive ineffective assistance. She had received referrals to the school counsellor, but nothing more was done to protect her from the bullying.²¹⁹ Merely requesting school staff to keep an eye out for bullying after a complaint was made, is not a reasonable response to the harm that she had endured.²²⁰

The Court held that the school was negligent in the way that they had failed to take the steps they had devised in their anti-bullying policies, to prevent the bullying behaviour and injury from occurring.²²¹ Once the school was found to be in breach of their duty of care to the student, the student needed to demonstrate that the school's failure to respond to the complaint in a reasonable manner had a causal relationship to the injury that the student had suffered.²²² The school claimed that the steps they should have taken would not have prevented further bullying, and also that the students psychiatric injury was not caused by the bullying at school.²²³

Causation

Causation is established by showing that the school's negligence was a necessary condition of the harm that was caused to the student.²²⁴ The harm caused to the student must flow from the school's actions.²²⁵ The student would have to prove that there was a connection with breach of the duty and the harm that they suffered.²²⁶ In the *Oyston* case it was the schools lack of action and thus their breach of their duty of care that caused harm to the student. The Court held that 'but for the failure of the College to implement the policy, the psychological injury to the

²¹⁷ Ibid.

²¹⁸ Witzleb and Crofts (n 7).

²¹⁹ Emil Ford Lawyers, 'Education Law Articles – Bullying' *Emil Ford Lawyers* (Web Page, 2022) <<https://www.emilford.com.au/education-schools/education-law-notes/education-law-articles-bullying/>>.

²²⁰ Ibid.

²²¹ *Oyston v St Patrick's College* (No 2) [2013] NSWCA 310, [7].

²²² Witzleb and Crofts (n 7).

²²³ Ibid.

²²⁴ Dwyer and Eastal (n 150).

²²⁵ Ibid.

²²⁶ Ibid.

appellant would not have occurred or at least would have been minimised'.²²⁷ The school would be in breach of its duty of care to the students if it does not follow the policies that they implement to combat bullying.²²⁸

This shows that not only is the implementation of the school's anti-bullying policy important, but that the implementation and enforcement of the policy plays a bigger and more important role in the school's duty.

As the cases above deal with traditional bullying, the duty of care from the school towards its students can be applied to cyberbullying. When cyberbullying occurs on the school premises, near the school premises, within the school hours, or through the use of school equipment, the school may be liable.²²⁹

In a separate bullying case, US case of *J.S. v Bethlehem Area School District*, a student had created a website from home that included derogatory comments about his math teacher.²³⁰ The website asked for funds in order to hire a hitman to kill the teacher.²³¹ The website was accessed from the school and gained the attention of other staff members. The school expelled the student, and the Court upheld the decision because the website had created 'actual and substantial interference with the work of the school'.²³²

The issue with cyberbullying is that it does not always occur on school grounds and during school hours. Cyberbullying often occurs outside of the school's supervision and responsibility.²³³ When cases of cyberbullying interfere with the learning environment of the school, the school must intervene, even when the disruption caused by the cyberbullying, occurs

²²⁷ *Oyston v St Patrick's College* (No 2) [2013] NSWCA 310, [71].

²²⁸ Witzleb and Crofts (n 7).

²²⁹ Ibid 247.

²³⁰ Wiseman (n 15).

²³¹ LexisNexis, 'Law School Case Brief', *LexisNexis* (Web Page, 2022) <<https://www.lexisnexis.com/community/casebrief/p/casebrief-j-s-v-bethlehem-area-sch-dist>>.

²³² Ibid.

²³³ Dwyer and Eastal (n 150).

outside of the school grounds.²³⁴ As a duty of care is established, schools need to implement effective policies that protect its students from harm.

2.6 Importance of school policy

As cyberbullying mainly affects school aged children, who spend a majority of their time at school, it is important for schools to develop policies that protect them from harm. Policies are important as they provide guidance, accountability, as well as set out the standards of behaviours that are expected.

As cyberbullying has gained attention from the media, many schools have added cyberbullying as a topic needed in their school policies.²³⁵ However, the development and implementation of an effective school policy that combats cyberbullying can be difficult for schools as cyberbullying usually occurs outside school hours and away from school grounds.²³⁶ It becomes difficult for schools to determine who has authority. The issue is who has legal responsibility for life beyond the schoolyard.²³⁷ Although cyberbullying usually occurs outside school hours, it is the emotional effects that flow from the cyberbullying, that follow the students to school, which can have an effect on the students' academic performance and behaviour.²³⁸ In addition to the school's duty of care, schools also 'have a vested interest in dealing with issues related to cyberbullying'.²³⁹

School policies need to have a clear definition of what bullying and cyberbullying are, the rights and responsibilities of staff, students and parents, prevention and intervention strategies, offers of support to victims, training and professional development for staff, reporting procedures, as well as clearly stating that bullying is not acceptable behaviour within the school and that tackling bullying requires a whole school effort.

²³⁴ Wiseman (n 15).

²³⁵ Ibid 11.

²³⁶ Ibid 19.

²³⁷ Ibid.

²³⁸ Michele L Ybarra and Kimberly J Mitchell, 'Online aggressor/targets, aggressors, and targets: a comparison of associated youth characteristics' (2004) 45(7) *Journal of Child Psychology and Psychiatry* 1308, 1315.

²³⁹ Wiseman (n 15).

It is important to have a school policy that encourages proper behaviours both online and in person for both the staff and students. School staff members that do not care for or understand the effects and significance of cyberbullying can lead to ‘policy deficiencies or inadequate prevention strategies’.²⁴⁰ Schools should not assume that school staff members know how to respond when faced with the issue of bullying even if there are procedures implemented in the schools bullying policies stating how to handle bullying incidences.²⁴¹ A study conducted by Ryan, Kariuki and Yilmaz, discovered that even though school staff members were aware of the rise in cyberbullying incidences, and could identify when cyberbullying was occurring, less than half of the teachers know what actions to take when a cyberbullying incident had occurred.²⁴² This suggests that in addition to the implementation of an effective school anti-bullying policy, schools should also prioritise professional development and training for school staff and administrators on cyberbullying and how to effectively handle the issue.²⁴³ This can also aid teachers in identifying warning signs or a change in behaviour in students in the classroom, such as a drop in academic performance, absenteeism, or an increased tendency to violate against others.²⁴⁴

In order for school policies to be effective at decreasing cyberbullying, school policies cannot just state intolerance to bullying behaviours. The school’s policies must be ‘well publicised, enforceable and implemented consistently’.²⁴⁵ Schools that choose not to raise awareness about cyberbullying and rely on the policies that just prohibit cyberbullying, and list punishments against that behaviour, have been found to be ineffective at combatting cyberbullying.²⁴⁶ Sole reliance on the policy itself does not reduce the impact of cyberbullying. Action, awareness and a change in culture within the school are needed to reduce cyberbullying.

²⁴⁰ Wanda Cassidy, Karen Brown and Margaret Jackson, ‘Under the radar’: Educators and cyberbullying in schools’ (2012) 33(5) *School Psychology International* 520, 521.

²⁴¹ Ibid.

²⁴² Thomas Ryan, Mumbi Kariuki and Harun Yilmaz, ‘A comparative analysis of cyberbullying perceptions of preservice educators: Canada and Turkey’ (2011) 10(3) *The Turkish Online Journal of Educational Technology* 1, 1.

²⁴³ Ibid 10.

²⁴⁴ Ibid 9.

²⁴⁵ Butler et al (n 47).

²⁴⁶ Wiseman (n 15).

For schools to deal with cyberbullying, students need to report the bullying behaviour. Research has shown that students are reluctant to report their experiences with cyberbullying.²⁴⁷ A study conducted by Cassidy, Jackson and Brown sought to determine whether the students would report their cyberbullying experiences to their parents, friends, school personnel, the police, or tell no one and keep it to themselves.²⁴⁸ Their research found that 47% of the students would not confide in or report cyberbullying to their school.²⁴⁹ The students who would not report their cyberbullying experiences to the school, stated that the main reason was fear of retribution from the cyberbully.²⁵⁰ Other reasons included that it was 'not the schools mandate, school staff could not stop the bullying, their friends could get in trouble, their parents would restrict their access to the internet, and that they would be labelled as an 'informer' or 'rat''.²⁵¹

In research conducted prior to this, it was claimed that the main reason students were reluctant to report cyberbullying, was for fear that the school would confiscate their technology, or their parents finding out and restricting their access to technology.²⁵² Whilst some schools nowadays may consider a school wide ban of mobile phones on school property as a way to counter cyberbullying, the current research seems to suggest that fear of having their mobile devices confiscated by the school or restricted access to technology by their parents, is not the youths main reason for not reporting the cyberbullying behaviours,²⁵³ and therefore would not be an effective way to reduce cyberbullying now, compared to if it was implemented in schools years ago.

Staying silent and not reporting the cyberbullying behaviour can be seen as the best option for victims of cyberbullying. Due to the nature of cyberbullying, the victims may not know who is behind the bullying, as much of the bullying can be done anonymously or behind fake accounts.

²⁴⁷ Ibid 35.

²⁴⁸ Wanda Cassidy, Margaret Jackson and Karen N. Brown, 'Sticks and Stones Can Break My Bones, But How Can Pixels Hurt Me?' (2009) 30(4) *School Psychology International* 383, 392.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid 394.

In Cassidy, Jackson and Brown's study when looking at cyberbullying victims and reporting practices according to age, they had found that 73% of students aged 11 were more likely to report cyberbullying incidences to school staff members compared to 42% of students aged 14. As students get older, they become less likely to confide in their parents or school staff members of experiences with cyberbullying, especially as a first option.²⁵⁴

School staff members who believe that bullying or cyberbullying is just a part of growing up and that the students should just tolerate that kind of behaviour, creates a negative school environment which makes it less likely for students to report any kind of bullying behaviour.²⁵⁵ Therefore, promoting a positive school environment may increase the numbers of reporting bullying incidences.

The banning of mobile phones on school property is another popular policy as it is an easy policy to implement as a response to cyberbullying. However, research has shown that it is not effective at all.²⁵⁶ As a majority of the cyberbullying incidents that happen at school are through the use of mobile phones, the students are reluctant to report cyberbullying for fear that the school would just confiscate their mobile phones as a result of breaching the school policy.²⁵⁷ The banning of mobile phones will only decrease the likelihood of students reporting bullying and cyberbullying incidences.

Merely outlining punishment for certain behaviours or describing a zero-tolerance policy is also ineffective and can be counterproductive.²⁵⁸ For schools to protect themselves and their students, they need to have a policy that 'clearly defines, prohibits, and outlines consequences for cyberbullying and other forms of electronic harassment'.²⁵⁹

²⁵⁴ Ibid 395.

²⁵⁵ Nancy H. Camp, 'Restoring Trust: A Grounded Theory Study of Cyberbullying Among Young Women' (2016) *Dissertations* 1, 35.

²⁵⁶ Ibid 43.

²⁵⁷ Wiseman (n 15).

²⁵⁸ Ibid 50.

²⁵⁹ Ibid 49.

The implementation and enforcement of an effective cyberbullying policy are not only important to protect the students from harm but can also prevent teen suicides and a range of other mental health issues from occurring.

Part of Cassidy, Jackson and Brown's research was to determine what students believed to be the best solution to cyberbullying. They achieved this by providing the students with ten practicable solutions to cyberbullying.²⁶⁰ They then asked the students to rank these solutions from the first choice to last. The ten solutions were:

1. develop programs to teach students about cyber-bullying and its effects.
2. set up an anonymous phone-in line where students can report cyberbullying.
3. make it known that the school does not tolerate cyberbullying.
4. punish students who participate in cyberbullying.
5. have a zero-tolerance policy towards cyberbullying.
6. involve the police in cases of cyberbullying.
7. get parents, students, and school staff together to talk about solutions.
8. develop a positive school culture where students learn to be kind to each other.
9. offer lots of extra-curricular activities so students won't have time to cyberbully.
10. work on creating positive self-esteem in students.²⁶¹

The top three solutions that were most often ranked as the first choice were:

1. set up an anonymous phone-in line where students can report cyberbullying (19%);
2. develop programs to teach students about cyber-bullying and its effects (18%);
3. punish students who participate in cyberbullying (11%) (which was later changed to 'working on creating positive self-esteem in students')²⁶²

They found that it was students aged 13 to 14 years old who were more likely to choose the option of creating positive self-esteem in students, compared to students who were younger.²⁶³

They also found that students had the perception that schools and educators need to focus on

²⁶⁰ Cassidy, Jackson and Brown (n 248).

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Ibid 396.

building positive school culture and fostering positive self-esteem among the students.²⁶⁴ By providing ethics of care in schools, studies have found that modelling, practice and dialogue, had led to ‘developing more respectful and responsive interactions and fostering a safe and nurturing environment for all students’.²⁶⁵

Middle school children fail to report cyberbullying to the school because they believe that school personnel would ignore the bullying behaviour and would not intervene.²⁶⁶ Students are also doubtful of the school's ability to properly handle and deal with cyberbullying, which is why students are more open to reporting incidences of cyberbullying to their peers first, parents and guardians next and schools as a last choice.²⁶⁷ As cyberbullying can often start at school, schools have a responsibility to deal with this behaviour as well as providing help and safety to the students who are victims of these behaviours. By having a school environment that fosters positive school culture and builds positive self-esteem in students, as well as building a close relationship between school staff members, parents, and students, it can open a dialogue that can encourage reporting.²⁶⁸

Cyberbullying is a public and social problem and the implementation of policy can seek to resolve the problem as policy ‘seeks to effect compromise between basic social values in tension’.²⁶⁹ The policy issues with regards to cyberbullying concern tensions between the best interest of the child,²⁷⁰ the parent and the school’s protective authority and responsibility over the child, as well as the freedom of speech.²⁷¹ For schools to develop an effective policy, there must be a collaborative effort between youth and adults, specifically policymakers, parents, staff members, and students. Cyberbullying has been an issue since the start of the digital age but has not been brought up as a serious issue until recent years.

²⁶⁴ Ibid.

²⁶⁵ Ibid 399.

²⁶⁶ Wiseman (n 15).

²⁶⁷ Cassidy, Jackson and Brown (n 248).

²⁶⁸ Ibid.

²⁶⁹ Brown, Jackson and Cassidy (n 41).

²⁷⁰ Best interest of the child is set out under the United Nations Convention on the Rights of the Child, which makes the best interest of the child, the primary consideration in actions and decisions that concern children.

²⁷¹ Brown, Jackson and Cassidy (n 41).

The youth are more educated and more knowledgeable on the current digital technologies and have experienced the effects of cyberbullying and peer culture, however, the adults have the ability and are in the position to develop and implement programs and policies that can bring support and change with regard to the issue of cyberbullying.²⁷² From Cassidy, Jackson and Brown's study, it is clear that the students want dialogue on cyberbullying as a part of the solution to cyberbullying. They believe that schools need to provide programs in the school curriculum as well as in the life of the school, for students to openly talk about cyberbullying, its effects, as well as ways to prevent and counter cyberbullying.²⁷³ For schools to implement intervention strategies into school policies, it is important to understand why and how cyberbullying starts.

Cyberbullying does not just affect people who do not fit in, either by ethnicity, physical appearance, how they dress, level of intellect, or athletic ability/inability. Cassidy's research found that one third of the student participants reported that they were victims of cyberbullying which suggests that victims of cyberbullying are not just students from marginalised groups, but also includes the 'average student'.²⁷⁴ Dialogue that can be meant as just teasing within a friendship group can be misconstrued and taken as an insult or attack by the victim. This can turn into a vicious cycle of harmful dialogue being exchanged.²⁷⁵ As cyberbullying can have the effect of causing students to feel afraid, or cause them to have suicidal thoughts, schools should bring more attention to cyberbullying. Some forms of intervention strategies that schools should consider implementing is to firstly develop a school culture that is respectful, welcoming and caring.²⁷⁶ Programs that can improve students' behaviour online such as through education on cyber safety, the effects of cyberbullying, and cyber etiquette, as well as programs that encourage and teach students how to be empathetic and assertive, may empower victims of cyberbullying to report their experiences.²⁷⁷ By educating the youth on the issues that surround cyber space and cyberbullying, as well as empowering them by building their self-esteem, it may lessen the number of cyberbullying cases that happen within school grounds.

²⁷² Cassidy, Jackson and Brown (n 248).

²⁷³ Ibid.

²⁷⁴ Ibid 399.

²⁷⁵ Ibid.

²⁷⁶ Ibid 400.

²⁷⁷ Ibid.

As the implementation of a school anti-bullying policy is of great importance, not all schools may have implemented such a policy in their school despite state policies requiring them to do so. When developing an effective anti-bullying and anti-cyberbullying policy in schools, an important factor to consider is a whole school approach with changes to the school's climate and culture. This is further explored in Chapter 4 where differences in the school policies between Western Australian public high schools, where there is no legislative compulsion to implement bullying and cyberbullying policies, and South Australian schools where there is legislative compulsion, lead to a difference in the number of policies implemented in schools.

2.7 Importance and requirements of establishing anti-bullying culture in schools

Australia does not have legislation that is specific to cyberbullying in schools. This leaves prevention strategies against cyberbullying to organisations such as schools. Other than South Australia, Australian states have not implemented specific anti-cyberbullying legislation to guide schools in establishing anti-cyberbullying culture in schools. The Canadian state of Ontario will also be explored in Chapter 5, where the implementation of an anti-bullying culture is written into state legislation.

Bullying can be a very challenging issue for school staff to address within the school environment.²⁷⁸ As bullying behaviours can be challenging to stop, cyberbullying is much more difficult to address, as it can happen anonymously as well as away from school grounds.²⁷⁹ As mentioned above, bullying and cyberbullying behaviours can lead to devastating consequences, ranging from anxiety and depression, to suicide ideation and attempts. Bullying can create a very hostile and oppressive environment in the school, not just for the victims, but for all students.²⁸⁰ School is a place where students learn and grow and they deserve to feel safe, not fearing that

²⁷⁸ Joseph R. Jones and Sharon Murphy Augustine, 'Creating An Anti-Bullying Culture In Secondary Schools: Characteristics to Consider When Constructing Appropriate Anti-Bullying Programs' (2015) 43(3) *American Secondary Education* 73, 73.

²⁷⁹ Ibid 74.

²⁸⁰ Ibid 76.

they are going to be the next target of the bully, therefore changing the climate of the school can reduce bullying behaviours.²⁸¹

In order to establish an anti-bullying culture at school, there must first be a positive school climate. School climate refers to the 'quality of the interactions between students, teachers, parents, and school staff, reflecting the norm, values and goals that represent the educational and social missions of the school'.²⁸² Research has shown that school climate has a direct impact on the level of bullying, with 'low incidences of bullying are a result of a healthy school climate'.²⁸³ Schools with a healthy school climate have fewer disciplinary problems, academic success, fewer incidences of bullying and had higher achievement scores.²⁸⁴ Positive school climates 'encourage positive interactions between peers and teachers',²⁸⁵ students feel like they belong, have a sense of identity, and feel welcomed, respected, and valued by others at school.²⁸⁶ In contrast to a negative or unhealthy school climate, students are fearful and intimidated.²⁸⁷ They also lack a sense of belonging and feel unsupported and unwelcome by staff and students.²⁸⁸ This leads to a feeling of disengagement which is 'characterised by low self-esteem, social anxiety, social avoidance, absenteeism and academic withdrawal'.²⁸⁹ Negative school climates were also found to have higher levels of bullying.²⁹⁰ Bosworth and colleagues suggest that school climate is dependent on two factors, psychosocial factors including positive relationships and connectedness, and organisational factors such as policies and administrative commitment.²⁹¹

Jones and Augustine suggest that in order to create an anti-bullying culture in schools, there must be empathy.²⁹² They argue that empathy plays a big role in an effective anti-bullying program.

²⁸¹ Ibid 77.

²⁸² Rosario Ferrer-Cascales et al, 'Effectiveness of the TEI Program for Bullying and Cyberbullying Reduction and School Climate Improvement' (2019) 16(4) *International Journal of Environmental Research and Public Health* 1, 2.

²⁸³ Lolita Winnaar, Fabian Arends and Unathi Beku, 'Reducing bullying in schools by focusing on school climate and school socio-economic status' (2018) 38(1) *South African Journal of Education* 1, 2.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

²⁹¹ Kris Bosworth et al, 'The impact of leadership involvement in enhancing high school climate and reducing bullying: An exploratory study' (2018) 17(3) *Journal of School Violence* 354, 355.

²⁹² Jones and Augustine (n 277).

Past research has also shown that empathy training has decreased incidences of bullying in schools. In a study conducted by Stanbury, Bruce, Jain and Stellern, they developed an empathy building program with the outcome of reducing bullying behaviour for middle school students.²⁹³ Parts of the empathy building program included increasing awareness and understanding of what bullying is,²⁹⁴ telling the students stories about bullying,²⁹⁵ increasing awareness of bullying behaviours and how it can be hurtful to others,²⁹⁶ to realise the long lasting impacts of bullying behaviours,²⁹⁷ understanding personal responsibility and appreciating their individuality,²⁹⁸ committing to action when they witness bullying behaviours,²⁹⁹ and lastly was to offer a meaningful personal connection to inspire behaviour change relating to bullying behaviours in the school.³⁰⁰ The results of this study had shown that over seven weeks, the empathy building program had reduced bullying behaviour.³⁰¹ This program had more of a positive effect on girls compared to boys.³⁰² They suggested this was due to girls' inherent orientation towards relationships and that they may be more sensitive to their feelings.³⁰³ Another explanation for the reduction in bullying after the empathy building program is that 'as students begin to realise the negative impacts of bullying behaviour and possible institutional consequences for being a bully, their empathy may increase'.³⁰⁴

Jones and Augustine suggested that six characteristics should be included when making an anti-bullying program within schools: community involvement, an assessment of the school climate, a consensus on the definition of bullying, student and parental agreement, professional development for faculty and staff, and program evaluation.³⁰⁵

²⁹³ Stacey Stanbury et al, 'The Effects of an Empathy Building Program on Bullying Behavior' (2009) 7(2) *Journal of School Counseling* 1, 2.

²⁹⁴ Ibid 18.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Ibid 20.

²⁹⁸ Ibid 21.

²⁹⁹ Ibid 22.

³⁰⁰ Ibid 25.

³⁰¹ Ibid 10.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid 11.

³⁰⁵ Jones and Augustine (n 277).

For an anti-bullying program to be successful, there must be involvement from the entire school community, such as the administrators, teachers, parents, community organisations, and all educational stakeholders.³⁰⁶ To reduce bullying, there needs to be a change in the way individuals view differences.³⁰⁷ It is very rare that a young person gets bullied because ‘they are perceived to be the same as everyone else’.³⁰⁸ Bullying often happens when a person stands out and is different from their environment or the ‘normative life that dominates in a society’.³⁰⁹ An example Jones used was the societal views of sexuality, with straight being viewed as positive or accepted, and gay binary being viewed as the negative side.³¹⁰ Jones argues that ‘oppositional frameworks exist with all forms of bullying as it relates to difference in race, class, gender’.³¹¹ When society places oppositional frameworks on these matters, this view becomes normalised within children, therefore schools must change how children view these differences as well as build tolerant attitudes towards others,³¹² as well as promote inclusivity and diversity.³¹³ When children and young people are allowed to reflect on differences in others as a positive aspect of life, levels of bullying and discrimination have been found to decrease.³¹⁴

Before an anti-bullying program can be constructed, it is important to assess the school climate on the types of bullying behaviours that exist, the school staff’s views on bullying in the school, and the student body’s view on bullying practices.³¹⁵ This is to determine how bullying is impacting the school. It is also important to have a consensus on how bullying is defined. Bullying needs to be defined in clear and understandable terms.³¹⁶ There needs to be an element of repetition, a power difference, and can include physical, verb and social harassment.³¹⁷ Schools need to determine what behaviours will classify as bullying, such as listing specific examples of bullying behaviour.³¹⁸

³⁰⁶ Ibid.

³⁰⁷ Ibid.

³⁰⁸ James O’Higgins Norman, 'Tackling Bullying from the Inside Out: Shifting Paradigms in Bullying Research and Interventions' (2020) 2(3) *International Journal of Bullying Prevention* 161, 164.

³⁰⁹ Ibid.

³¹⁰ Jones and Augustine (n 277).

³¹¹ Ibid.

³¹² Ibid.

³¹³ Norman (n 307).

³¹⁴ Ibid.

³¹⁵ Jones and Augustine (n 277).

³¹⁶ Ibid.

³¹⁷ Ibid 79.

³¹⁸ Ibid.

Effective anti-bullying programs should increase student and parental involvement. For students, schools should implement avenues for reporting bullying incidences without fear of retaliation from the bully.³¹⁹ Victims of bullying should also have avenues for support and assistance. Schools should also communicate and educate parents about the anti-bullying program.³²⁰ Parents should be trained to be able to recognise if their child is being bullied. In recognising the early symptoms of bullying, such as a drop in grades, fear of going to school, or injuries, early interventions can be put in place.³²¹

Professional development and training for faculty and staff are also important for an anti-bullying school culture. When staff do not intervene in bullying situations, it can send a message to the students that they don't care.³²² A staff's lack of intervention may also be due to a lack of confidence in dealing with bullying situations.³²³ They may also not intervene because they may be unsure if the behaviours they are witnessing are bullying behaviour.³²⁴ This reinforces the 'need for a well-developed definition of bullying in the school culture'.³²⁵ By increasing the staff's awareness of bullying, it increases the likelihood that they will intervene.³²⁶ Like parents, staff also need to be trained to recognise symptoms of bullying.³²⁷

Anti-bullying programs are not a one size fits all, and implementation of programs with this belief will not be successful at reducing bullying.³²⁸ The program must be developed for the specific school. It is also important that the anti-bullying program be assessed annually to determine whether the objectives of bullying reduction are achieved and whether changes need to be made.³²⁹

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Ibid 80.

³²² Ibid.

³²³ Ibid.

³²⁴ Ibid.

³²⁵ Ibid.

³²⁶ Ibid.

³²⁷ Ibid 81.

³²⁸ Ibid.

³²⁹ Ibid.

Past research has shown that for initiatives to be successful at addressing bullying in schools, it must be developed as a monitored whole school approach.³³⁰ Norman and Sullivan believe that it is important for school staff and leaders to be familiar with the current research on bullying. Creating an anti-bullying committee within the school can aid in spreading awareness and management of change in relation to bullying.³³¹ There are seven elements that schools can use for self-evaluation, as well as help decide what actions need to be taken to enhance or change within school practices to reduce bullying and promote acceptance and diversity.³³² The seven elements are leadership and change management, policy management, curriculum planning, school ethos, student voice and bystanders, student support services, and partnership with parents and local communities.³³³

Norman and Sullivan found that ‘leadership style is critical to successfully resolving bullying within a wider whole-school approach’.³³⁴ Researchers have argued that it is the ‘principal’s skills and attitudes are central to resolving bullying successfully’,³³⁵ however, this may be dependent on the leadership model that is used by the principal. Research has shown that schools with an authoritative school climate were associated with less bullying.³³⁶ They suggest that if a principal believes that bullying is not an issue that is worth addressing, their values impact the school’s readiness to prevent bullying.³³⁷ Principals play a vital role in implementing a vision where bullying is unacceptable behaviour. Other members of school leadership will also have to show that they value the entire school community and are available to emotionally support victims of bullying.³³⁸ Bosworth and colleagues research found that school leadership was significantly related to a decrease in reported bullying behaviour.³³⁹ They suggest that administrative leadership may have created a norm where bullying is less normative.³⁴⁰ They

³³⁰ James O’Higgins Norman and Keith Sullivan, ‘Reducing school bullying: A whole school approach’ in Helen Cowie and Carrie-Anne Myers (eds), *School Bullying and Mental Health: Risks intervention and prevention* (Routledge, 2019) 1, 181.

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Ibid 182.

³³⁶ Bosworth et al (n 290).

³³⁷ Norman and Sullivan (n 329).

³³⁸ Ibid.

³³⁹ Bosworth et al (n 290).

³⁴⁰ Ibid.

also found that students' perceptions of the school climate had also improved.³⁴¹ Principals will also need to ensure that their staff receive training on how to prevent and intervene in bullying. If the students feel as though the school's leadership are unprepared or lack the confidence in preventing bullying or is failing in their responsibilities to keep students safe, the school's approach to bullying will be undermined.³⁴² Olweus also suggests that there should be an audit conducted to determine the frequency of bullying behaviours over a length of time. This information will give an idea of the extent of the bullying problem within the school as well as create a base for where and how changes should be made within the whole school framework.³⁴³

For policy management and development, Norman and Sullivan suggest that schools should develop anti-bullying policies with input from the school community.³⁴⁴ Butler and colleagues examined Australian schools' readiness to respond to cases of cyberbullying, as well as the liability that the school may face if they are not prepared to handle the challenge of cyberbullying.³⁴⁵ They suggest that the policies have to be well publicised, enforceable and implemented consistently for schools to discharge their legal duty.³⁴⁶ They also argue that reliance on old policies will not be sufficient to respond to cyberbullying.³⁴⁷ Norman and Sullivan also suggest that when creating anti-bullying policies, schools should not rely on generic policies or templates for reducing bullying.³⁴⁸ Butler and colleagues believe that there is not one set policy that will apply to all schools. They suggest that due to the nature and seriousness of cyberbullying, there should be a practice that 'all school policies should embrace to educate students, staff and parents to deter and deal with such behaviour'.³⁴⁹ Norman and Sullivan suggest that there needs to be an understanding that bullying, conflict, and resolution can occur differently for different genders and cultural contexts.³⁵⁰ School policies need to reflect bullying prevention and intervention strategies that are evidence based.³⁵¹ A school anti-bullying

³⁴¹ Ibid.

³⁴² Norman and Sullivan (n 329).

³⁴³ Ibid 183.

³⁴⁴ Ibid.

³⁴⁵ Butler et al (n 47).

³⁴⁶ Ibid 24.

³⁴⁷ Ibid.

³⁴⁸ Norman and Sullivan (n 329).

³⁴⁹ Butler et al (n 47).

³⁵⁰ Norman and Sullivan (n 329).

³⁵¹ Ibid.

policy should enable good practice, provide training and guidance for staff on how to intervene and prevent bullying, state the consequences for perpetrators of bullying, offer support for victims of bullying, emphasise the school's commitment to celebrating inclusivity and diversity, and most importantly a clear procedure of monitoring and evaluating bullying incidences.³⁵²

When policies lack transparency or when teachers provide no response or leave bullying behaviours unchallenged after bullying incidences are reported, students become reluctant to report as they lack the confidence that bullying will be addressed by the school.³⁵³ Looney warns against the view that these problems arise when teachers do not follow the instructions they have been given, but that the issue lies in policies' intention.³⁵⁴ Norman and Sullivan state that the teacher's ability to implement these policies is based on their 'own personal qualities and position within existing social power structures'.³⁵⁵ They suggest including mechanisms within the policies to help teachers reflect on how their personal influences affect their response to implementing policy.³⁵⁶

When planning a curriculum for bullying prevention and intervention, the programs must be designed with clear intentions of the product and how it will be taught and modelled across the whole school environment.³⁵⁷ When developing an anti-bullying program, the use of one-off workshops or guest speakers to talk about bullying, is not enough and will not be enough to reduce bullying at school.³⁵⁸ Norman and Sullivan suggest that there are many ways in which schools can implement opportunities for the curriculum to challenge students' attitudes and raise awareness of the impact of prejudice and discrimination,³⁵⁹ however they believe that broad discussions on bullying rather than specific lessons would be more appropriate.³⁶⁰ There are areas in different subjects such as health education, and religious education where teachers can provide lessons on bullying issues, as well as promote and value diversity. They stress the

³⁵² Ibid 184.

³⁵³ Ibid.

³⁵⁴ Anne Looney, 'Curriculum politics and practice: from 'implementation' to 'agency'' (2014) 2(1) *Irish Teachers Journal* 7, 8.

³⁵⁵ Norman and Sullivan (n 329).

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

³⁵⁹ Ibid.

³⁶⁰ Ibid 185.

importance of teachers using positive and non-stereotypical role models for people who identify as LGBT, or for those that do not conform to any gender specific lifestyle.³⁶¹

Another important aspect of addressing bullying in a whole school approach is the creation of a positive school ethos. School ethos can be said to ‘influence every aspect of school life and is a determinant factor in the success of work to address bullying’.³⁶² It is important for school documentation such as student journals, and staff handbooks to explicitly state that the school does not tolerate harassment or discrimination of any kind.³⁶³ These values can also be made explicit in staff recruitment or student admissions. There needs to be a constant reminder that everyone is an equally valued member of the school community.³⁶⁴

An effective way to address bullying is through the involvement of students when developing the school's anti-bullying policy and procedures.³⁶⁵ Students should be given a platform to discuss ways in which bullying and discriminatory behaviours can be tackled. Another important factor is to reduce the bystander effect and increase reporting and taking action when bullying is witnessed.³⁶⁶ Bystanders play an important role in the frequency of bullying. When bystanders perceive cyberbullying to be more severe, they were more likely to help.³⁶⁷ Research has suggested that bystanders of bullying can experience the same negative effects as those who are bullied and that empathy was related to bystander behaviour.³⁶⁸

There is a need for schools to provide support for students who are affected by and experience bullying. Providing a supportive atmosphere and respecting their requests for confidentiality can help students overcome the effects of bullying.³⁶⁹ School staff need to be aware of the health and emotional issues that are affected by bullying. Students also need to be made aware that support is available, and clear referral procedures are in place, such as the school chaplain or guidance

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ Ibid 186.

³⁶⁴ Ibid.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Nixon (n 115).

³⁶⁸ Ibid 151.

³⁶⁹ Norman and Sullivan (n 329).

counsellor.³⁷⁰ Partnerships with parents and local communities can also help to address bullying. While some parents may feel anxious when addressing the topic of bullying to their children, research has shown that when parents and schools work together and are involved in responding to bullying, ‘children and young people are more likely to feel safe, perform better at schoolwork and take action when they encounter bullying’.³⁷¹

2.8 Conclusion

The above literature review shows the importance of developing a whole school approach when it comes to bullying and cyberbullying behaviours, as well as developing a positive school climate with a focus on empathy training. In Western Australia, there is not a big focus on preventative measures when it comes to bullying behaviours in schools. The focus of studies already conducted on cyberbullying in Australia has been based on reactive rather than on preventive action, such as the use of laws already in place to deal with cyberbullying. Current Australian Commonwealth legislation also only deals with cyberbullying issues after the harm has been done, such as the role of the eSafety Commissioner, where they aid in taking down harmful images posted online resulting in cyberbullying. While these actions are helpful, it is still reactionary, and harm has already been conducted. This is further explored in Chapter 3.1.

To protect children and youth from the harms of cyberbullying, the focus needs to be on preventative actions. This gap will be explored by examining the South Australian approach towards bullying and cyberbullying prevention. The South Australian government implemented a state-wide preventative approach to bullying, as well as implemented legislation requiring schools to have policies and guidelines in place for the safety and protection of children and young people. This will be compared to Western Australia and their approach towards bullying and cyberbullying prevention. They will be discussed in the next chapter.

³⁷⁰ Ibid.

³⁷¹ Ibid 188.

CHAPTER THREE

Legislation on Bullying and Cyberbullying in Australia

The previous chapter discussed the importance of an anti-bullying and anti-cyberbullying policy and culture implemented within schools. This chapter first explores the current legislation on bullying and cyberbullying in Australia. As stated in the literature in Chapter 2, children are often unable to seek assistance and remedies available through legislation. Thus, schools in Australia should be encouraged to put anti-cyberbullying prevention strategies in place. This chapter explores the position of Western Australian and South Australian schools concerning their responsibilities in preventing cyberbullying through legislation, guidelines, policies and other approaches regarding cyberbullying prevention. The approach taken in this thesis is to compare the position of two Australian states: South Australia and Western Australia. The reason for this approach is that South Australia has legislation in place that require prescribed organisations including high schools to provide a child safe environment through an action plan such as a school policy, whereas Western Australia lacks such legislative compulsion for schools.

Part 3.1 analyses the existing laws in the Australian Commonwealth whereby the victims of this behaviour may be able to successfully seek legal sanctions such as criminal liability for perpetrators and civil liability for schools, however, this occurs after the harm is done. Parts 3.2 and 3.3 establishes that as school legislation is state based in Australia, only some states such as South Australia have recognised the need for preventive strategies by requiring schools to have anti-bullying policies, as well as the government, implemented state wide bullying prevention strategies in place to deal with bullying and cyberbullying. While there are policies that require schools in Western Australia to implement anti-bullying policies, this research explores the difference between the two states. Parts 3.2 and 3.3 also explore Western Australia and South Australia's criminal responses that can cover cyberbullying should the victims wish to seek legal action.

3.1 Current Australian legislation on cyberbullying

Civil and criminal laws in Australia

There is currently no specific legislation in Australia that make it an offence to cyberbully someone. However, more general criminal and civil legislation may be used by victims of cyberbullying to seek. The Commonwealth *Criminal Code Act 1995* (Cth) contains several offences that could apply to cyberbullying. The most relevant is section 474.17, which makes it an offence to use a carriage service to menace, harass or cause offence.³⁷² Under the *Telecommunications Act 1997* (Cth), a carriage service is a ‘service for carrying communications by means of guided and/or unguided electromagnetic energy’.³⁷³ This includes any form of electronic communications, such as text, messages, phone calls, emails, and social media sites. This limits the scope to cyberbullying only and does not cover traditional face to face bullying.

According to the Commonwealth Director of Public Prosecutions, since the introduction of section 474.17 in 2004, there have been 927 charges against 458 defendants proven.³⁷⁴ It is not possible to determine how many of these cases were related to cyberbullying. The Commonwealth 2018 Report stated, ‘none of the charges or prosecutions that the committee is aware of, appear to relate to cyberbullying between school aged children’.³⁷⁵ This has shown that while there is legislation that can prosecute cyberbullying behaviours, in practice it is not a deterrent for school aged children.³⁷⁶ This suggests that there is a need for other deterrents for cyberbullying for school aged children at local level such as through school.

Section 474.29A makes it an offence to use a carriage service for suicide related materials that directly or indirectly counsels or incites committing or attempting to commit suicide.³⁷⁷ This Act also makes it an offence to use a telecommunications network with the intent to commit a serious offence, or using the carriage service to make a threat, or hoax threat.³⁷⁸

³⁷² *Criminal Code Act 1995* (Cth) s 474.17.

³⁷³ *Telecommunications Act 1997* (Cth) s 7.

³⁷⁴ Commonwealth of Australia, ‘Adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying’ (Report, 28 March 2018) 32.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ *Criminal Code Act 1995* (Cth) s 474.29A.

³⁷⁸ *Ibid.*

It is also an offence under section 474.14 to use a telecommunications network with intent to commit a serious offence.³⁷⁹ Section 474.15 makes it an offence to use a carriage service to make a threat, where the person intends to cause fear or apprehension that the threat will be carried out.³⁸⁰ This can be a threat to kill, or a threat to cause serious harm. It is not necessary to prove that the person felt actual fear that the threat would be carried out.³⁸¹ Section 474.16 makes it an offence to use a carriage service for a hoax threat. Such as inducing a false belief that there is a dangerous or harmful substance, that has been or will be left in any place.³⁸²

The main argument against implementing cyberbullying specific legislation is that the existing laws are adequate enough to address serious cases of cyberbullying. The Digital Industry Group Incorporated argued that ‘victims of cyberbullying are already able to take action under various laws and schemes in addition to the *Criminal Code Act 1995*’,³⁸³ including acts such as the *Privacy Act 1988* (Cth), *Defamation Act 2005* (WA), and the *Telecommunications (Interception and Access) Act 1979* (Cth). *Privacy Act 1988* and *the Defamation Act 2005*, however, do not create criminal offences.

These are the current Commonwealth criminal laws that are available for victims of cyberbullying. While the scope of these existing laws may be enough to cover the issue of cyberbullying, it is still only a reaction to cyberbullying. It can be argued that these laws may act as a deterrent for cyberbullying behaviours, however, as these laws are not known to specifically target acts of cyberbullying, it is unlikely that these laws will make a difference as a way of preventing cyberbullying behaviours, and may only apply in very serious cases of cyberbullying.

If the evidence is insufficient to take legal action under criminal proceedings, the victim of cyberbullying can ‘seek compensation for the harm suffered from either the perpetrator or a third party deemed responsible’³⁸⁴ such as against the school of the victim or perpetrator. Some civil

³⁷⁹ Ibid s 474.14.

³⁸⁰ Ibid s 474.15.

³⁸¹ Ibid.

³⁸² Ibid s 474.16.

³⁸³ Commonwealth of Australia (n 373).

³⁸⁴ Des Butler, Sally Kift and Marilyn Campbell, ‘Cyber Bullying In Schools and the Law: Is There an Effective Means of Addressing the Power Imbalance?’ (2009) 16(1) *eLaw Journal: Murdoch University Electronic Journal of Law* 1, 14.

actions that can be taken against the perpetrator include assault, defamation, intentional infliction of mental harm, and invasion of privacy. As discussed before, a school authority may also be liable for negligence. While under the care of the school, schools owe a duty of care to their students. When this duty is breached, and harm is caused to the student because of the breach, the school may be liable.

The eSafety Commissioner and the Online Safety Act 2021

In 2015, the Australian government passed the *Enhancing Online Safety Act 2015*. The purpose of this Act was to create the office of the Children's eSafety Commissioner.³⁸⁵ The function of the Children's eSafety Commissioner was 'take a national leadership role in online safety for children',³⁸⁶ as well as 'administering a complaints system for cyberbullying materials that are targeted at an Australian child'.³⁸⁷ When the Commissioner's functions were broadened in 2017 to protect all Australians and not just Australian children, the name was changed to the eSafety Commissioner.³⁸⁸ Even though the eSafety Commissioner's functions were broadened, it did not extend its cyberbullying scheme to protect adults too. The reasoning behind this at the time was that there are existing criminal laws that can apply to online dangers for people of all ages, but also that child protection from cyberbullying is a priority.³⁸⁹

Under this Act, there is no specific definition for what cyberbullying is. However, the definition can be inferred in section 5 of the *Enhancing Online Safety Act*, cyberbullying is described as the posting of any materials targeted at an Australian child 'that is on a social media service or relevant electronic device'³⁹⁰ that has the 'effect of seriously threatening, seriously intimidating, seriously harassing or seriously humiliating the Australian child'.³⁹¹

The *Enhancing Online Safety Act* gives the Commissioner the power to investigate and act upon complaints made to them about 'serious cyberbullying materials that are targeted at an Australian

³⁸⁵ *Enhancing Online Safety Act 2015* (Cth) s 3.

³⁸⁶ Commonwealth of Australia (n 373).

³⁸⁷ *Enhancing Online Safety Act 2015* (Cth) s 3.

³⁸⁸ Commonwealth of Australia (n 373).

³⁸⁹ *Ibid* 4.

³⁹⁰ *Enhancing Online Safety Act 2015* (Cth) s 5(1)(a).

³⁹¹ *Enhancing Online Safety Act 2015* (Cth) s 5(1)(b).

child’.³⁹² The Commissioner can investigate a way they think fit,³⁹³ and they have the power to issue notices to the individual who posted the cyberbullying materials.³⁹⁴ The written notice can require the individual to remove the cyberbullying material, refrain from posting any further cyberbullying material, or apologise to the child for posting the material.³⁹⁵

In December 2020, an exposure draft of the new proposed Bill called the Online Safety Bill 2021 was open for public consultation and feedback.³⁹⁶ In February 2021, the Bill was introduced into Parliament by Honourable Paul Fletcher. At the end of July 2021, the Bill was passed and came into effect in January 2022. The purpose of this new *Online Safety Act 2021* was to create a new framework for online safety for all Australians. The objectives of the Act are to improve online safety as well as promote online safety for all Australians.³⁹⁷

Under this new legislation, the eSafety Commissioner has a wider range of powers that allow them to protect people who experience or are exposed to harmful content. New to this legislation is the Adult Cyber Abuse Scheme. Under this scheme, the eSafety Commissioner has the power to require the removal of online abuse materials that target an Australian adult from online service providers.³⁹⁸ In the previous legislation this power was only limited to Australian children. Under this scheme, there is a high threshold for the term ‘serious abuse’. The abuse must cause serious physical or psychological harm that is menacing, harassing or offensive, and could endanger a person’s life.³⁹⁹ This high threshold is to ensure that resources are only directed to remove serious harmful materials. The time limits of when online service providers are to remove the harmful content have been reduced from within 48 hours from receiving a formal notice of removal to only 24 hours after receiving the notice.⁴⁰⁰ If the harmful content is not removed, the eSafety Commissioner can seek civil penalties or fines against the provider for up

³⁹² eSafety Commissioner, ‘Our legislative functions’, *eSafety Commissioner* (Web Page, 2022) <<https://www.esafety.gov.au/about-us/who-we-are/our-legislative-functions>>.

³⁹³ *Enhancing Online Safety Act 2015* (Cth) s 19(2).

³⁹⁴ *Enhancing Online Safety Act 2015* (Cth) s 42(1).

³⁹⁵ *Ibid*.

³⁹⁶ Department of Infrastructure, Transport, Regional Development and Communications, ‘Consultation on a Bill for a new Online Safety Act’ *Australian Government* (Web Page, 2020) <<https://www.infrastructure.gov.au/have-your-say/consultation-bill-new-online-safety-act>>.

³⁹⁷ *Online Safety Act 2021* (Cth) s 3.

³⁹⁸ *Ibid* s 88.

³⁹⁹ eSafety Commissioner (n 392).

⁴⁰⁰ *Online Safety Act 2021* (Cth) s 88.

to \$555,000.⁴⁰¹ For individuals, if they do not remove the content after receiving a removal notice, the Commissioner can seek the same civil penalties and fines against them for up to \$111,000.⁴⁰² Under this legislation, the existing cyberbullying scheme for Australian children is strengthened. The Commissioner can order the removal of harmful materials from specific social media platforms, but this removal power extends to all social media services.⁴⁰³ Like with the adult scheme, the time limits for removal of harmful content have been reduced from 48 hours to 24 hours.⁴⁰⁴

In relation to the Image Based Abuse Scheme, time limits for removal of the harmful materials have also been reduced from 48 hours to 24 hours.⁴⁰⁵ There are also new powers given to the Commissioner to expose online service providers if they have repeatedly failed to deal with image-based abuse.⁴⁰⁶ There are also large penalties for people who post, or threaten to post an intimate image of someone without their consent.⁴⁰⁷ This legislation also gives the Commissioner stronger information gathering powers, such as the powers to investigate incidences as well as gather information on people who use a social media service, electronic service or internet service.⁴⁰⁸ These new powers enable them to reveal the identities of the people behind accounts that conduct serious online abuse. The Commissioner can use this power over all the schemes when investigating a complaint.⁴⁰⁹ The Commissioner can also require a person to appear before them to provide information regarding the investigation, and failure to do so is a criminal offence.⁴¹⁰

Under this legislation, there are also new Basic Online Safety Expectations. In the previous online safety legislation, the *Enhancing Online Safety Act 2015*, the Act had limited basic online safety requirements. The new legislation has made these safety expectations broader and applies

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Ibid s 65.

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid s 77.

⁴⁰⁶ Ibid,

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid s 194.

⁴⁰⁹ eSafety Commissioner (n 392).

⁴¹⁰ *Online Safety Act 2021* (Cth) s 195.

to a wider range of online safety issues.⁴¹¹ There is a new standard for online service providers to be proactive in protecting people from harmful content. They are expected to ‘minimise bullying, abuse and other harmful activity and content’,⁴¹² and have an easy way to lodge complaints about unacceptable use.⁴¹³ Under these new expectations, they are also encouraged to be more transparent about these safety practices and policies.⁴¹⁴

This new online safety legislation is extremely beneficial to the safety of the Australian community; however, it is still a reactive response to cyberbullying. The complaints system and take down notices are only helpful after the harmful content has already been posted and shared online. Prevention of cyberbullying can be achieved through a culture of awareness and education in schools.⁴¹⁵ Currently, there is no guidance in this Act for the implementation of preventive responses for schools.

National Safe Schools Framework and the Australian Student Wellbeing Framework

In 2003, the Australian Government developed the National Safe Schools Framework. This framework aimed to provide a ‘safe, supportive and respectful learning environment for all Australian school students’.⁴¹⁶ The National Safe Schools Framework is a collaborative effort by the Australian government, the State governments, Territories, and non-government school authorities.⁴¹⁷

The framework involves a whole school approach to safety and wellbeing by providing the school with nine elements to assist with issues of harassment, aggression, violence, and bullying. In 2011, it was modified to include cyberbullying, and cyber-safety.⁴¹⁸

⁴¹¹ Ibid s 46.

⁴¹² eSafety Commissioner (n 392).

⁴¹³ *Online Safety Act 2021* (Cth) s 46.

⁴¹⁴ eSafety Commissioner (n 392).

⁴¹⁵ Government of South Australia, *Connected: A Community Approach to Bullying Prevention Within the School Gates and Beyond* (Report, 2018) 11 <<https://www.education.sa.gov.au/sites/default/files/connected-community-approach-bullying-prevention.pdf>>.

⁴¹⁶ Student Wellbeing Hub, ‘Review and Update of the National Safe Schools Framework 2017’ Student Wellbeing Hub (Web Page, 2018) 5 <https://studentwellbeinghub.edu.au/media/9975/nssf_summary_report.pdf>.

⁴¹⁷ Ibid.

⁴¹⁸ Standing Council on School Education and Early Childhood, ‘National Safe Schools Framework’ *Standing Council on School Education and Early Childhood* (Web Page, 2010) 2 <<https://files.eric.ed.gov/fulltext/ED590680.pdf>>.

The nine elements of the National Safe Schools Framework are:

1. Leadership commitment to a safe school
2. A supportive and connected school culture
3. Policies and procedures
4. Professional learning
5. Positive behaviour management
6. Engagement, skill development and safe school curriculum
7. A focus on student wellbeing and student ownership
8. Early intervention and targeted support
9. Partnerships with families and community⁴¹⁹

The National Safe Schools Framework provided materials including guidelines, templates, checklists and other resources to enable schools to develop policies to prevent and respond to bullying and cyberbullying.⁴²⁰ This initiative was not mandatory or compulsory for schools to follow and participate.⁴²¹

In 2017 there was an extensive review conducted on the National Safe Schools Framework to ensure that the Framework still aligned with the contemporary issues facing the Australian school community, such as diversity and inclusion.⁴²² The recommendations following the review included: expanding the scope of the National Safe Schools Framework, the need for greater school awareness, the inclusion of explicit teaching and learning approaches, continual professional development for teachers, and contemporary issues should be addressed (in relation to Aboriginal and Torres Strait Islander people), and the need for a new National Safe Schools

⁴¹⁹ Ibid 4.

⁴²⁰ Kristen Lopes, 'Could regulatory reform reduce bullying in Australia schools?' *Colin Biggers & Paisley Lawyers* (Web Page, 15 October 2012) <<https://www.cbp.com.au/insights/insights/2012/october/could-regulatory-reform-reduce-bullying-in-austral>>.

⁴²¹ Ibid.

⁴²² Lauren Osbich, 'The Australian Student Wellbeing Framework: Safe, Supported, Included and Connected' *School Governance by Complispace* (Web Page, 7 November 2018) <<https://www.schoolgovernance.net.au/news/2018/11/08/the-australian-student-wellbeing-framework-safe-supported-included-and-connected#:~:text=The%20Wellbeing%20Framework%20replaced%20the,wellbeing%20policies%20and%20support%20requirements.>>>.

Framework to better align with the current initiatives for student safety and wellbeing.⁴²³ These recommendations resulted in the development of the Australian Student Wellbeing Framework, which replaced the National Safe Schools Framework.⁴²⁴

The Australian Student Wellbeing Framework consists of five elements. They are:

1. Leadership
2. Inclusion
3. Student voice
4. Partnerships
5. Support

This new Framework aims to build positive and inclusive school learning environments through ‘explicit teaching, evidence informed practices and active participation of the whole school community’.⁴²⁵ This Framework supports all Australian schools to promote positive relationships, and promote student wellbeing in a safe, inclusive and connected environment.⁴²⁶ Like the National Safe Schools Framework, the Australian Student Wellbeing Framework is voluntary and thus not mandatory for all Australian schools to follow.⁴²⁷

The legal actions and consequences identified are only useful after cyberbullying has been committed and the harm has been done and is argued to be too late.⁴²⁸ The focus should be on implementing policies that protect children before the harm has occurred, and subsequently addressed through legal actions. Children who cyberbully may not be aware of the seriousness of the harm they cause and may only think they are having fun.⁴²⁹ While these legal consequences need to be in place for cyberbullying that cause serious harm, however, not all cyberbullying conduct should attract criminal liability. As this research is only focused on school aged children cyberbullying other children, the legal consequences that are available may be seen as an

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵ Student Wellbeing Hub, ‘Australian Student Wellbeing Framework’ *Student Wellbeing Hub* (Web Page, 2020) <https://studentwellbeinghub.edu.au/media/9310/aswf_booklet.pdf>.

⁴²⁶ Ibid.

⁴²⁷ Osbich (n 436).

⁴²⁸ Commonwealth of Australia (n 373).

⁴²⁹ Butler, Kift and Campbell (n 384)

extreme response to the behaviour.⁴³⁰ Slee commented that the criminalisation of young people can lead to unfortunate effects, such as school disengagement, which can cause a reduction in academic performance, which then can lead to the juvenile justice system.⁴³¹ It has also been argued that the criminalisation of school bullies would also likely not deter bullying behaviour, but instead could do more harm than good.⁴³² Widening the scope of the law by implementing a cyberbullying law when existing laws provide adequate coverage, ‘would significantly increase crime reports, exceed existing police resources and draw police into activities that ought not to attract criminal culpability’.⁴³³ The Mental Health Commissioners of Australia argued that cyberbullying is a social issue and not a legal problem.⁴³⁴

However, others argue that the law specific to cyberbullying can be used as an educational tool. Laws can act as a deterrent as they can teach people what are unacceptable ways to behave.⁴³⁵ The Australian Human Rights Commission stated that there should be different standards for addressing cyberbullying of children and adults. Children and young people who bully may not fully understand the severity of their actions.⁴³⁶ Implementing excessive punitive responses would leave long lasting impacts on their future for an action caused by a lack of judgement or knowledge of the situation.⁴³⁷ As perpetrators of cyberbullying are often found to also be victims of it, criminal offences should be considered with caution.⁴³⁸

The Carly Ryan Foundation suggested that there should be a bullying charge that mimics the stalking legislation and can issue a no contact order or intervention order scheme at court, like domestic violence orders which are issued by the police or by the victim,⁴³⁹ or reforms that can enable authorities to suspend internet access from repeat offenders of serious cyberbullying.⁴⁴⁰

⁴³⁰ Ibid.

⁴³¹ Commonwealth of Australia (n 373).

⁴³² Ibid 34.

⁴³³ Ibid 35.

⁴³⁴ Ibid 29.

⁴³⁵ Ibid 31.

⁴³⁶ Ibid 30.

⁴³⁷ Ibid.

⁴³⁸ Ibid.

⁴³⁹ Ibid 34.

⁴⁴⁰ Ibid.

The most effective way to address cyberbullying is in its prevention. The following ways to address cyberbullying would be through early interventions through reporting, education, and harm minimisation.⁴⁴¹ The development of the eSafety Commissioner aids in providing online safety to all Australians. While their main role only comes into effect after harm has been conducted, they have also placed strong responsibilities on service providers to protect people by minimising harmful content on their sites.

As school legislation is state based in Australia, some states such as South Australia have recognised the need for government implemented state wide preventive strategies by requiring schools to have a uniform way of dealing with bullying and cyberbullying within schools and beyond. South Australia also has legislative requirements for the implementation of bullying policies in schools. This is not the case for Western Australia. Although Western Australian public schools are required to implement anti-bullying policies by the Department of Education, this has not been found to be the case (this is further explored in Chapter 4). Unlike in South Australia, there is no legislative requirement or compulsion for Western Australian public schools to implement anti-bullying policies in their school. Although the Department of Education is a government department, schools are unlikely to implement policies required unless there is a legislative compulsion.

It is also interesting to note that in Australia, on the third Friday of March every year, it is the National Day of Action against Bullying and Violence.⁴⁴² It is an initiative to take a stand against bullying and violence and is open to all public and private schools. It is also a day for schools, staff, and students to ‘create a shared understanding of what bullying is, outline your bullying prevention policies and show support to students who may be experiencing bullying’.⁴⁴³ It was stated that in 2022, 68% of Australian schools had taken part.⁴⁴⁴

⁴⁴¹ Ibid 29.

⁴⁴² Bullying. No Way!, ‘National Day of Action against Bullying and Violence’ *Bullying. No Way!* (Web Page, 19 April 2022) <<https://bullyingnoway.gov.au/preventing-bullying/national-day-of-action-against-bullying-and-violence>>.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid.

3.2 Western Australia's approach to cyberbullying

Department of Education policies and procedures

In Western Australia, the Department of Education governs all public schools. On the Department of Education's website, there is a policy named 'Student Behaviour in Public Schools Policy'. This policy applies to principals in public schools, stating that they are responsible for the implementation of this policy.⁴⁴⁵ Under the policy rules, the principal must 'document a whole school plan to support positive student behaviour, implement the documented whole school plan to support positive student behaviour, and provide individual student behaviour support where the need is identified'.⁴⁴⁶ These three rules must be made in accordance with the Student Behaviour in Public Schools Procedures. The policy rules are lawful orders for the purposes of section 80(a) of the *Public Sector Management Act 1994* (WA) and are therefore to be observed by all Department of Education employees.⁴⁴⁷ The focus of the policy is only the positive student behaviour and therefore the policy does not have a direct impact on using it as a preventative measure for cyberbullying.

In accordance with the Student Behaviour in Public Schools Procedures, the document for a whole school plan to support positive student behaviour must include a school code of conduct stating behaviours students should learn and maintain, the roles and responsibilities of staff, teaching and classroom management strategies, rules regarding the use of electronic devices and strategies for record keeping.⁴⁴⁸ Teaching and classroom management strategies that support positive student behaviour include management of the school environment, strategy for communicating to parents on students' behaviour, strategies for the application of disciplinary measures, as well as measures to address all forms of bullying, aggression, drug and alcohol misuse, presence of weapons, and risk of suicidal behaviour or self-injury, or harm from child

⁴⁴⁵ Government of Western Australia, 'Student Behaviour in Public Schools Policy' *Department of Education* (Web Page, 2022) <<https://www.education.wa.edu.au/web/policies/-/student-behaviour-in-public-schools-policy?redirect=%2Fweb%2Fpolicies%2Fschool-management>>.

⁴⁴⁶ Ibid.

⁴⁴⁷ *Public Sector Management Act 1994* (WA) s 80(a).

⁴⁴⁸ Government of Western Australia, 'Student Behaviour in Public Schools Procedure' *Department of Education* (Web Page, 2022) <<https://www.education.wa.edu.au/web/policies/-/student-behaviour-in-public-schools-procedures>>.

maltreatment.⁴⁴⁹ This suggests that the Department of Education requires all public schools to implement a school policy that includes ways to address all forms of bullying.⁴⁵⁰

The Department of Education's website also provides a guideline intended to assist schools in their development of approaches and strategies for the prevention and management of bullying.⁴⁵¹ Cyberbullying falls under the definition of bullying in this guideline. Although this guideline provides for a range of effective strategies that schools can implement as a part of their anti-bullying policy, such as whole school prevention strategies, targeted early intervention strategies and intervention strategies for bullying incidences, this guideline is not compulsory for schools to implement. This guideline serves as a resource that schools can use which targets certain areas deemed important for the successful prevention of school bullying.

As this guideline and its strategies are not mandatory for schools to use or implement as a part of their anti-bullying policy, schools can choose not to use them. If schools are not legally required by State legislation to implement these strategies within their school policies, there is a possibility that some schools lack any prevention or management of bullying. Schools that choose not to implement the effective strategies listed in the guideline provided, ultimately affect children who are the victims of bullying at school.

The research of this thesis indicates that a large number of Western Australian public high schools do not have a visible policy, guideline or strategy regarding bullying or cyberbullying reflected in their school policy document. This does not assume that if they do not have a policy available on their website, that they do not have a policy on bullying at all. Even though the Department of Education requires all public schools to implement what is effectively an anti-bullying policy, this research, explored in Chapter 4 on public high schools in Western Australia have shown that this is not followed, and thus reinforces the need for a legislative requirement that makes the implementation of anti-bullying policies for all schools, compulsory (see Chapter 4 Figure 2.1). In addition to the requirement to implement policies by the Department of

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Government of Western Australia, 'Behaviour and Wellbeing', Department of Education (Web Page, 7 April 2010) <<http://det.wa.edu.au/studentssupport/behaviourandwellbeing/detcms/school-support-programs/behaviour-and-wellbeing/binary-files/preventing-and-managing-bullying---template-for-schools.en>>.

Education, they had also created a plan for reducing violence in Western Australian schools through the implementation of additional support, resources, and programs for schools.

Department of Education against school violence

In 2018, Sue Ellery the Minister for Education and Training, made a statement on school violence titled ‘Let’s take a stand together’. The goal of this document was to reduce violence in Western Australian schools, with the help from schools, families, and communities.⁴⁵² In this document, a plan was developed to support school staff so that they are confident to maintain orderly learning environments for all students. This plan also creates a safer work environment for teachers and other school staff.⁴⁵³

This plan provides 10 actions against violence in Western Australian schools. Action 1 states that principals are to issue automatic suspensions for students who attack other students, students who start fights, and those who film a fight rather than seek help. Principals must also develop a behaviour plan for students to return to school, as well as work with the students’ families wherever possible.⁴⁵⁴ Action 2 states that principals are to automatically move to exclude a student who physically attacks school staff. Exclusion orders are approved by the Department of Education.⁴⁵⁵ Action 3 states that there be a new alternative learning setting for the most violent students where they can continue to learn until they can return to mainstream school.⁴⁵⁶ Action 4 states that there will be new guidelines for school staff on how to respond to aggression, and guidance on when physical contact is reasonable.⁴⁵⁷ Action 5 states that there will be a range of training programs and support that will be delivered to school staff. Training will consist of how to build positive behaviours, de-escalate aggressive behaviour, and in emergency cases, how to appropriately restrain. Support will also be provided to school staff affected by the incidents.⁴⁵⁸ Action 6 requires every public school to add ‘good standing’ requirements to their school behaviour policy. Students who misbehave will have privileges removed but can be earned back

⁴⁵² Government of Western Australia, ‘Let’s take a stand together’ *Department of Education*’ (Web Page, 2018) <<https://www.education.wa.edu.au/dl/69okxe>>.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

by making amends and behaving well.⁴⁵⁹ Action 7 offers free ‘positive parenting program’ to all parents of kindergarten children. The program teaches skills to manage family issues, and improve child behaviour and positive relationships.⁴⁶⁰ Action 8 is to review critical incident reporting and monitoring.⁴⁶¹ Action 9 states that resources will be provided to help spark community conversations about violence in schools. The goal is to work together in making violence in schools socially unacceptable.⁴⁶² Action 10 allows students and young people to share their views and make recommendations for solutions to address violence in the community. As there has been a stance from the community to stop violence in schools, there is a gap for schools to take a stance against bullying and cyberbullying within schools. As cyberbullying has been found to leave detrimental effects on young people, there should be more support for combatting this problem within Australian schools. A summary of the Action Plan against violence is tabled below.

Table 1 10 Action plan against violence

Action 1	Principals are to suspend: <ul style="list-style-type: none"> • students who attack other students, • students who start fights, • those who film a fight rather than seek help. Principals must also develop a behaviour plan for students to return to school, and work with the students’ families wherever possible.
Action 2	Principals are to exclude students who physically attacks school staff. Exclusion orders are approved by the Department of Education.
Action 3	A new alternative learning setting for the most violent students.
Action 4	New guidelines for school staff on how to respond to aggression.
Action 5	Range of training programs and support that will be delivered to school staff. <ul style="list-style-type: none"> • how to build positive behaviours, • de-escalate aggressive behaviour, • how to appropriately restrain (in emergency cases).
Action 6	Every public school to add ‘good standing’ requirements to their school behaviour policy.
Action 7	Free ‘positive parenting program’ to all parents of kindergarten children.
Action 8	Review critical incident reporting and monitoring.
Action 9	Resources will be provided to help spark community conversations about violence in schools.

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

⁴⁶² Ibid.

Action 10	Students and young people to share their views and make recommendations for solutions to address violence in the community.
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Whilst there is no specific legislation in Western Australia that makes cyberbullying an offence, if the effect of cyberbullying is so severe, there are other criminal and civil offences available that cover the effects of cyberbullying, should the victim decide to take legal action.

Current Western Australian civil and criminal offences for cyberbullying

If the cyberbullying is caused by someone at school, it is advised that before any legal action is taken, parents and victims of the cyberbullying should first make a complaint to the school.⁴⁶³ As all schools in Western Australia are required to have an anti-bullying policy implemented to deal with bullying and cyberbullying, under their duty of care, the schools must make sure that students are safe as well as act when bullying is occurring on the property. Students and parents can lodge a formal complaint with the school if they feel as though no action is being taken by the school to stop the bullying from occurring.⁴⁶⁴ If the school does not do anything to stop the bullying or if the victim feels as though their concerns are not satisfactorily resolved even after the complaint has been made, the victim and their parents can lodge a complaint to the Regional or Local Education Office of the Department of Education.⁴⁶⁵ When this complaint is lodged, the possible outcomes they can provide are giving feedback to the school, taking an action to fix or improve the situation, engaging in restorative process,⁴⁶⁶ or acknowledging that the solution could have been handled better.⁴⁶⁷ If this process does not satisfactorily resolve the matter or if the outcome is unreasonable, the complainant can request an independent review with the Ombudsman.⁴⁶⁸ The Ombudsman will investigate complaints from the decision making of government agencies.

⁴⁶³ Government of Western Australia, 'Understand the complaints process' *Department of Education* (Web Page, 2022) <<https://www.education.wa.edu.au/understand-the-complaints-process>>.

⁴⁶⁴ Youth Law Australia, 'Bullying at school' *Youth Law Australia* (Web Page, 30 November 2021) <<https://yla.org.au/wa/topics/school/bullying/#is-bullying-illegal>>.

⁴⁶⁵ Government of Western Australia (n 463).

⁴⁶⁶ Examples of restorative process include arranging a place and time for a meeting with the parties involved, where the issues are raised and what outcome is hoped to be achieved. A support person or a Parent Liaison Officer may also be in attendance to provide support for the parties.

⁴⁶⁷ Ibid.

⁴⁶⁸ Ibid.

In Western Australia, there are a range of offences that could cover cyberbullying, however, there is no specific legislation or section in the *Criminal Code* that makes cyberbullying itself, an offence. The following sections are offences that a victim of cyberbullying may consider pursuing.

In section 313 of the *Criminal Code Act Compilation Act 1913* (WA), any person who unlawfully assaults another is guilty of an offence and is liable to imprisonment for 18 months and an \$18,000 fine.⁴⁶⁹ Under section 222, assault is defined as a person who, touches, moves, strikes, or applies force of any kind, onto another person without that person's consent.⁴⁷⁰

Under section 338B, it is an offence for a person to make a threat to kill, injure, endanger or harm another person, make a threat to destroy, damage or harm any property, make a threat to take or exercise control of a building, or threaten to cause a detriment of any kind to another person, or threaten to distribute an intimate image of another person.⁴⁷¹ They will be liable for up to 6 years imprisonment,⁴⁷² but a threat to kill another person carries up to 14 years imprisonment.⁴⁷³

Section 338E of the *Criminal Code* is the offence of stalking. This section makes it an offence for a person to pursue another person with the intent to intimidate them.⁴⁷⁴ Under the Act, to pursue someone includes repeated communications, directly or indirectly with words or otherwise, to repeatedly follow them, to watch the place where that person lives or works, to repeatedly cause the person to receive unsolicited items.⁴⁷⁵ Stalking in circumstances of aggravation results in imprisonment for 8 years, but in any other case, it carries a penalty of imprisonment for 3 years.⁴⁷⁶

⁴⁶⁹ *Criminal Code Act Compilation Act 1913* (WA) s 313(1).

⁴⁷⁰ *Ibid* s 222.

⁴⁷¹ *Ibid* s 338B(1).

⁴⁷² *Ibid* s 338B(1)(b).

⁴⁷³ *Ibid* s 338B(1)(a).

⁴⁷⁴ *Ibid* s 338E(1).

⁴⁷⁵ *Ibid* s 338D(1).

⁴⁷⁶ *Ibid* s 338E(1).

Under section 221BD it is an offence to distribute an intimate image of another person where that person depicted in the image does not consent to the distribution.⁴⁷⁷ Under this Act, to distribute means to communicate, sell, send, exhibit, transmit, or make the image available for access by electronic or other means.⁴⁷⁸ An intimate image refers to a still or moving image that shows circumstances where a person would expect privacy, such as their genital or anal area, bare or covered by underwear, breasts of the person, bare or covered, or the person engaged in a private act.⁴⁷⁹ A person under the age of 16 years is incapable to consent to the distribution of an intimate image.⁴⁸⁰ They are liable for 3 years imprisonment, or a summary conviction penalty is 18 months imprisonment and an \$18,000 fine.⁴⁸¹

Section 204B makes it an offence for an adult to use electronic communications with the intent to procure a person under the age of 16 years to engage in sexual activity or expose them to any indecent matter in Western Australia or elsewhere.⁴⁸² They will be liable for 5 years imprisonment.⁴⁸³

Section 217 states that a person that is involved in child exploitation, such as invites them, causes them, procures them, or offers a child for the purpose of the production, to be in the production of child exploitation material,⁴⁸⁴ they are liable to 10 years imprisonment.⁴⁸⁵ Section 218 makes it an offence to produce child exploitation materials.⁴⁸⁶ They are liable to 10 years imprisonment.⁴⁸⁷ Section 219 makes distribution and possession with intent to distribute child exploitation materials an offence for 10 years imprisonment.⁴⁸⁸ Section 220 makes it an offence to possess child exploitation materials. They are liable to imprisonment for 7 years.⁴⁸⁹

⁴⁷⁷ Ibid s 221BD(2).

⁴⁷⁸ Ibid s 221BC.

⁴⁷⁹ Ibid s 221BA.

⁴⁸⁰ Ibid s 221BB(6).

⁴⁸¹ Ibid s 221BD(2).

⁴⁸² Ibid s 204B(2).

⁴⁸³ Ibid.

⁴⁸⁴ Ibid s 217(1).

⁴⁸⁵ Ibid s 217(2).

⁴⁸⁶ Ibid s 218.

⁴⁸⁷ Ibid.

⁴⁸⁸ Ibid s 219(2) & (3).

⁴⁸⁹ Ibid s 220.

Under section 320(3), it is an offence for a person to procure, incite or encourages a child to engage in sexual behaviour.⁴⁹⁰ They are liable to imprisonment for 20 years.⁴⁹¹

Section 320(4) and (5) states that a person who indecently deals with a child⁴⁹² or procures, incites or encourages a child to commit an indecent act is liable to 10 years imprisonment.⁴⁹³ A person who indecently records a child is guilty of 10 years imprisonment.⁴⁹⁴ Under this section, a child means a child under 13 years of age.⁴⁹⁵ An indecent act means an act that is committed in the presence of another, or an act that is recorded in any manner, such as photographed or videotaped.⁴⁹⁶

Section 272 states that a person who by threat or intimidation which causes another person to do an act that results in the death of that person, is deemed to have killed them.⁴⁹⁷ Under section 288, it is an offence for any person to procure another person to kill themselves,⁴⁹⁸ to counsel another person to kill themselves or induces them to do so,⁴⁹⁹ or to aid another person in killing themselves.⁵⁰⁰ They will be liable to life imprisonment.

Table 2 below summarises the WA Criminal Code that can apply to bullying or cyberbullying.

Table 2 WA *Criminal Code* laws that apply to cyberbullying

Section	Detail	Penalty	How it can apply to bullying or cyberbullying
S 313 Common assault	Any person who unlawfully assaults another. Assault is defined as a person who, touches, moves, strikes, or applies	18 months imprisonment and a \$18,000 fine	Bullies who physically harm the victim

⁴⁹⁰ Ibid s 320(3).

⁴⁹¹ Ibid.

⁴⁹² Ibid s 320(4).

⁴⁹³ Ibid s 320(5).

⁴⁹⁴ Ibid s 320(6).

⁴⁹⁵ Ibid s 320(1).

⁴⁹⁶ Ibid s 319(1).

⁴⁹⁷ Ibid s 272.

⁴⁹⁸ Ibid s 288(1).

⁴⁹⁹ Ibid s 288(2).

⁵⁰⁰ Ibid s 288(3).

	force of any kind, onto another person without that person's consent		
S 338B Threats	A person who makes a threat to kill, injure, endanger or harm another person, make a threat to destroy, damage or harm any property, make a threat to take or exercise control of a building, or threaten to cause a detriment of any kind to another person, or threaten to distribute an intimate image of another person	6 years imprisonment, but a threat to kill another person carries up to 14 years imprisonment	Bullies who make threats to kill or harm the victim, to destroy their property, or threaten to distribute the victim's images
S 338E Stalking	A person who pursues another person with the intent to intimidate them. Pursue includes repeated communications, directly or indirectly with words or otherwise, to repeatedly follow them, to watch the place where that person lives or works, to repeatedly cause the person to receive unsolicited items	Circumstances of aggravation results in 8 years imprisonment, but in any other case it carries a penalty of 3 years imprisonment	Cyberbullies who send messages to the victim to intimidate them
S 221BD Distribution of intimate image	A person who distributes an intimate image of another person where that person depicted in the image does not consent to the distribution. Distribute means to communicate, sell,	3 years imprisonment, or a summary conviction penalty is 18 months imprisonment and a \$18,000 fine	Cyberbullies who share or distribute intimate images of the victim without their consent, such a revenge porn.

	send, exhibit, transmit, or make the image available for access by electronic or other means		
S 204B Using electronic communication to procure, or expose to indecent matter, child under 16	An adult who uses electronic communications with the intent to procure a person under the age of 16 years to engage in sexual activity or expose them to any indecent matter	5 years imprisonment	Adults who groom young people online, or communicates with a young person with the intent to expose them to indecent materials
S 217 Involving child in child exploitation	A person that invites a child, causes them, procures them, or offers a child for the purpose of the production, to be in the production of child exploitation material	10 years imprisonment	People who groom young people online with the intent to use them for child exploitation material
S 218 Producing child exploitation material	A person who produces child exploitation materials	10 years imprisonment	People who groom young people online with the intent to use them to produce child exploitation material
S 219 Distributing child exploitation materials	A person who distributes child exploitation materials or possesses with intent to distribute child exploitation materials	10 years imprisonment	People who groom young people online with the intent possess or distribute child exploitation material
S 220 Possession of child exploitation materials	A person who possesses child exploitation materials	7 years imprisonment	People who groom young people online with the intent possess child exploitation material
S 320(3) Child under 13, sexual offences against	A person who procures, incites, or encourages a child to engage in sexual behaviour	20 years imprisonment	People who groom children online with the intent to engage in sexual behaviour

S 320(4) Child under 13, sexual offences against	A person who indecently deals with a child,	10 years imprisonment	People who groom children online with the intent to indecently deals with them
S 320(5) Child under 13, sexual offences against	A person who procures, incites, or encourages a child to commit an indecent act,	10 years imprisonment	People who groom children online with the intent to encourages them to commit an indecent act
S 320(6) Child under 13, sexual offences against	A person who indecently records a child	10 years imprisonment	People who groom children online with the intent to indecently record them
S 272 Causing death by threat	A person who by threat or intimidation which causes another person to do an act that results in the death of that person, is deemed to have killed them	20 years imprisonment	People who threaten or bully young people into committing suicide
S 288 Procuring etc. suicide	A person who procures another person to kill themselves, to counsel another person to kill themselves or induces them, or to aid another person in killing themselves	Life imprisonment	Cyberbullies who persuade young people to commit suicide

If victims of cyberbullying choose not to take criminal legal action against the perpetrator, there are a range of civil actions that can be taken.

Cyberbullying can fall under the scope of defamation if untrue online posts or messages that are published online causes damage to someone's reputation. However, not all offensive or harmful

remarks posted online can cause harm to a person's reputation.⁵⁰¹ Defamation requires words that are either spoken or written that 'harm your reputation in the eyes of ordinary people in the community'⁵⁰² such as in your workplace where if your reputation is harmed, can cause you to be shunned, avoided, made fun of or despised, or causes you a loss of work.⁵⁰³ For materials to be considered defamatory, the materials must be communicated to someone else, such as posted online for people to see, in the newspaper, or by talking to others about it.⁵⁰⁴ Taking any legal action can be very time consuming as well as expensive. If successful, the court may order damages to compensate for the harm suffered such as economic loss.⁵⁰⁵ They may also order an injunction to stop the person who published the defamatory materials from doing it again in the future.⁵⁰⁶ In some cases, cyberbullying may fall under anti-discrimination laws. Some examples may include discrimination in terms of age, race, disability, sex, gender identity, or sexual orientation.⁵⁰⁷

Restraining orders can also be made by the courts to protect victims' violent or intimidating or threatening behaviours. In Western Australia, a person can apply for a misconduct restraining order to restrain a person from breaching the peace, causing fear, damaging property or intimidating another person (the person seeking to be protected) by behaving in an intimidating or offensive manner.⁵⁰⁸ This restraining order only applies to people who are not in a domestic or family relationship. If the behaviours of the cyberbully are more violent and there has either been an act of violence that has been committed, or is feared to be committed by a person against the person seeking protection, then a person can apply for a violence restraining order to restrain a person from committing an act of abuse, breaching the peace, causing fear, damaging property or

⁵⁰¹ Legal Aid Western Australia, 'Defamation' *Legal Aid Western Australia* (Web Page, 2 July 2018) <<https://www.legalaid.wa.gov.au/find-legal-answers/your-rights/discrimination-harassment-and-bullying/defamation>>.

⁵⁰² Ibid.

⁵⁰³ Ibid.

⁵⁰⁴ Youth Law Australia, 'Defamation' *Youth Law Australia* (Web Page, 9 September 2021) <<https://yla.org.au/wa/topics/courts-police-and-the-law/defamation/>>.

⁵⁰⁵ Ibid.

⁵⁰⁶ Ibid.

⁵⁰⁷ Legal Aid Western Australia, 'LGBTIQA+ Discrimination' *Legal Aid Western Australia* (Web Page, 18 January 2021) <<https://www.legalaid.wa.gov.au/sites/default/files/inline-files/LGBTIQA%2B-Discrimination-Factsheet.pdf>>.

⁵⁰⁸ Magistrates Court of Western Australia Civil Jurisdiction, 'Fact Sheet 39 – Misconduct Restraining Order' *Magistrates Court of Western Australia* (Web Page, 8 June 2021) <https://www.magistratescourt.wa.gov.au/_files/Civil_factsheet_39.pdf>.

intimidating another person.⁵⁰⁹ This restraining order also only applies to those who are not in a domestic or familial relationship. There are restraining orders available to victims who are in a familial or domestic relationship to the perpetrator.

As schools have a duty of care to ensure the safety of their students, legal action can also be taken against the school if the duty is breached. If it can be proved that the school was in breach of their duty of care to the student by failing to keep them safe from harm caused by bullying, the victim can sue for negligence as seen in the case of *Oyston*.

According to section 90 of the *School Education Act 1999* (WA), the principal of a government school can suspend a student, who in their opinion, has committed a breach of school discipline.⁵¹⁰ Section 91 states that a student may be expelled from a government school if they have committed a breach of school discipline where they also affected or threatened the safety of anyone on the school premises, or that their behaviour has disrupted the educational instruction of other students.⁵¹¹ Under this Act, a breach of school discipline means ‘any act or omission that impairs the good order and proper management of the school’.⁵¹²

The principal must notify the parents of the student that they recommend expulsion and must also give reasons why this recommendation has been made.⁵¹³

In addition to disciplinary actions, a person can also report the bullying to the police. Depending on the severity of the harm that was caused to the victim, the perpetrator could be charged with the offences mentioned above, including the Federal offences. Reports can also be made to the eSafety Commissioner. If there were harmful images posted online, they can help with the take down of the harmful materials.

⁵⁰⁹ Magistrates Court of Western Australia Civil Jurisdiction, ‘Fact Sheet 38 – Violence Restraining Order’ *Magistrates Court of Western Australia* (Web Page, 8 June 2021) <https://www.magistratescourt.wa.gov.au/_files/Civil_factsheet_38.pdf>.

⁵¹⁰ *School Education Act 1999* (WA) s 90.

⁵¹¹ *Ibid* s 91.

⁵¹² *Ibid* s 89.

⁵¹³ *Ibid* s 92(2).

Litigation should be the last option to consider when wanting to obtain a remedy, and thus a preventative approach for school cyberbullying in Western Australia should be promoted. In the next part, the South Australian approach to cyberbullying is examined to explore lessons that can be learnt for Western Australia.

3.3 South Australia's approach to cyberbullying

Children and Young People (Safety) Act 2017

In 2016, the Child Protection Systems Royal Commission in South Australia investigated the laws, policies, practices, and structures that were in place for children at risk of harm.

Commissioner Margaret Nyland submitted a report titled 'The Life They Deserve' to the Governor of South Australia detailing a system that was in urgent need of reform.⁵¹⁴ In the report, Commissioner Nyland made 260 recommendations to improve the child protection system in South Australia.⁵¹⁵ Throughout the report, there was an emphasis on the best interest of the child, earlier intervention methods, the need for an evidence-based approach, as well as finding the best solution for individual circumstances.⁵¹⁶

In response to the Royal Commissions report, the South Australian government released a document titled 'A Fresh Start' which details the changes it made to the child protection systems. In this document, the South Australian government responded to each of Commissioner Nyland's recommendations.⁵¹⁷ They also looked beyond statutory child protection systems. In their report, they state that prevention is the best solution and thus services and programs must extend into health, education, and other wellbeing services, in addition to the statutory protection systems.⁵¹⁸ The new child protection system requires a collaborative effort with other non-

⁵¹⁴ Government of South Australia, 'Child Protection Systems Royal Commission' (Web Page, 2022) <<https://www.childprotection.sa.gov.au/child-protection-initiatives/system-reform/child-protection-systems-royal-commission>>.

⁵¹⁵ Ibid.

⁵¹⁶ Government of South Australia, 'A fresh start' (Report, November 2016) 6 <https://www.childprotection.sa.gov.au/__data/assets/pdf_file/0011/107111/a-fresh-start.pdf>.

⁵¹⁷ Ibid 34.

⁵¹⁸ Ibid 2.

government and government agencies to create a united community that is dedicated to protecting all children.⁵¹⁹

South Australia's response to Nyland's recommendations, outlined a system level reorientation, but also describe that child protection is not just a government issue but is everybody's business and responsibility. Parents, carers, communities, and non-government service providers all play a role.⁵²⁰ It is a collaborative effort. Having strong partnerships with the community and child centred practices are important for providing better care for children and young people.

As a part of reforming and reorientating the child protection system, the creation of a new statutory child protection system included legislative reform. The South Australia government in this document mentioned replacing the *Children's Protection Act 1993* (SA) which was the current child protection legislation in 2016, with the Children and Young People (Safety) Bill 2016,⁵²¹ which the government believed would be a better reflection of the approach taken from the Nyland report, whereby the wellbeing and protection of a child is the paramount consideration in the operation and enforcement of the Act.⁵²²

The *Children and Young People (Safety) Act 2017* purpose is to protect children and young people from harm, to provide for children and young people who are in care, and for other purposes.⁵²³ This legislation creates a new framework which implements several recommendations from the Royal Commission report on child protection laws.

The *Children and Young People (Safety) Act 2017* requires prescribed organisations to provide a child safe environment.⁵²⁴ Section 114(1)(b) highlights, that certain organisations must have policies and procedures to ensure that a child safe environment is provided. The policies and procedures under this section must be 'designed to ensure that safe environments for children and young people are established and maintained in respect of the services or activities provided

⁵¹⁹ Ibid 8.

⁵²⁰ Ibid.

⁵²¹ Ibid 18.

⁵²² Ibid.

⁵²³ *Children and Young People (Safety) Act 2017* (SA).

⁵²⁴ Ibid s 114.

or undertaken by the prescribed organisation'.⁵²⁵ Section 114(3) states that a prescribed organisation must provide a statement to the Chief Executive certifying that they have the child safe environment policies and procedures in place within the organisation.⁵²⁶ This is not the case for Western Australia. A prescribed organisation must be able to produce for inspection, a copy of the policies and procedures they have prepared or adopted, at the request of a person to whom the prescribed organisation provides a service.⁵²⁷ A prescribed organisation means a person or bodies that undertake child related work, such as education services for children.⁵²⁸

This suggests that all public schools in South Australia have to certify to the Chief Executive that they have a policy that ensures a child safe environment, such as through an anti-bullying policy. In addition to legislation providing child safe environments, South Australia had brought up the issue of implementing their own anti-bullying laws following the death of a young schoolgirl, Libby Bell. Although the Bill lapsed in Parliament, the next part examines the purpose of the Bill and whether there is a need for preventative anti-cyberbullying measures in Western Australia.

Libby's Law – Supporting anti-bullying legislation in South Australia

In late 2017, the suicide of Adelaide student Libby Bell prompted a review of South Australia's anti-bullying laws. Libby Bell was 13 years old when she committed suicide after being bullied at school, in a public setting, as well as online through different social media platforms.

Following her death, there were calls to implement legislation that would make bullying a criminal offence. A Member of Parliament of the Australian Conservatives Dennis Hood introduced the Statutes Amendment (Bullying) Bill 2017 into the South Australian Legislative Council.

This Bill was known in the community as 'Libby's Law'. The purpose of the Bill was to target and punish serious forms of bullying, which also included cyberbullying. This Bill was also

⁵²⁵ *Children and Young People (Safety) Act 2017* s 114(1)(b).

⁵²⁶ *Ibid* s 114(3).

⁵²⁷ *Ibid*.

⁵²⁸ *Ibid* s 114(7).

modelled after ‘Brodie’s Law’ in Victoria, the *Crime Amendments (Bullying) Act 2011* (Vic) that was introduced after Brodie Panlock committed suicide due to relentless workplace bullying.

The Statutes Amendment (Bullying) Bill 2017 (SA), sought to amend the *Criminal Law Consolidation Act 1935*, by introducing section 20C which presents bullying as an offence. For the purpose of this division, bullying referred to when one person does one or more of the following to another person:

- a. Expressly or implicitly threatens to cause harm to the person.
- b. Degrades, humiliates, disgraces or harasses the other person,
- c. Uses abusive or offensive language towards the other person,
- d. Gives or sends offensive material to the other person, or leaves it where it can be found by the other person or given to or brought to the attention of the other person,
- e. Publishes or transmits offensive materials by means of the internet or some other form of electronic communication in such a way that will be found by the other person,
- f. Engages in any other conduct that could cause apprehension or fear in the other person.⁵²⁹

In this Bill, the harm caused to a person included self-harm⁵³⁰ that is inflicted by the person. This Bill included intentional or reckless behaviour that could cause harm by undertaking more than one act of bullying against another person over more than 7 days, that caused harm or serious harm to another person.⁵³¹

The severity of the offence was recognised in this Bill, as the maximum penalty was set at 10 years imprisonment, as opposed to 5 years imprisonment if the bullying was less severe.

⁵²⁹ *Statutes Amendment (Bullying) Bill 2017* (SA) Division 7AA s 20A.

⁵³⁰ Self-harm is described as “an act with nonfatal outcome, in which an individual deliberately initiates a non-habitual behaviour that, without intervention from others, will cause self- harm, or deliberately ingests a substance in excess of the prescribed or generally recognised therapeutic dosage, and which is aimed at realising changes which the subject desired via the actual or expected physical consequence”. Government of South Australia, ‘South Australian Perinatal Practice Guideline Suicidal ideation and self-harm’ (Web Page, 2010) <https://www.sahealth.sa.gov.au/wps/wcm/connect/cce826804eede5dfb5b4b76a7ac0d6e4/Suicidal+ideation+and+self-harm_PPG_v2_1.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-cce826804eede5dfb5b4b76a7ac0d6e4-nGF4T-N>.

⁵³¹ *Statutes Amendment (Bullying) Bill 2017* (SA) s 20C.

In the second reading speech, Honourable Dennis Hood conveyed the story of South Australia's Libby Bell, a 13 year old student who had taken her life after suffering years of bullying and cyberbullying.⁵³² Her family explained that she had suffered cyberbullying through popular social media apps such as Facebook, Instagram, and Snapchat. She had also suffered physical bullying at school but also within the community at a local fast-food restaurant. Libby had a drink thrown in her face very publicly, which had received extensive media coverage.⁵³³ Hon. Hood also recounted by reading the commentary of a mother of a girl who had attended the same school as Libby, in which she alleged that 'Libby's main bully also instigated a prolonged and vicious attack on her daughter'.⁵³⁴

Since the South Australian Bill was modelled after the Victorian anti-bullying legislation, Hon. Hood also mentioned Victoria's Cassidy Trevan, who was also 13 years old when she started experiencing relentless bullying at her school. Because of the extent of the bullying, Cassidy had taken time off school to learn coping skills in order for her to return to school.⁵³⁵ When she returned to school, her bullies had apologised for their behaviour and offered her friendship. They had invited her to a local festival to which she was excited to go to hoping everything with her bullies will be over. Instead of going to the festival, they had arranged for her gang rape.⁵³⁶ Cassidy had reported her abuse to the police but was too afraid to make an official statement. She suffered 2 more years of intense bullying until she took her life at the age of 15. It is believed that no one was questioned about this bullying incident.⁵³⁷

Another story conveyed by Hon. Hood was of Brodie Panlock's story, a 19 year old Victorian who had ended her life after enduring ongoing bullying by her work colleagues.⁵³⁸ Despite their actions having caused her suicide, they were never charged with a criminal offence. Brodie's Law Foundation states 'there were obvious limitations in the law and conduct involving serious bullying should be subjected to criminal sanctions'.⁵³⁹ Victoria passed subsequent legislation

⁵³² South Australia, *Parliamentary Debates*, Legislative Council, 27 September 2017, 7662.

⁵³³ Ibid.

⁵³⁴ South Australia, *Parliamentary Debates*, Legislative Council, 27 September 2017, 7663.

⁵³⁵ Ibid.

⁵³⁶ Ibid.

⁵³⁷ Ibid.

⁵³⁸ Ibid.

⁵³⁹ Ibid.

known as Brodie's Law which punishes acts of serious bullying with a maximum penalty of up to 10 years imprisonment.⁵⁴⁰ Hon. Hood stated that Libby's Law was heavily based on Brodie's Law.

Hon. Hood's speech in Parliament raises the question of whether Parliament should wait for suicide incidents before making changes to the law. Hon Hood stated that 'when people are bullied to the point that they believe suicide is their only option, it is a tragic reflection on our society'.⁵⁴¹ He reiterated that for an act to constitute bullying, there must be an intention to cause harm or recklessly cause harm, and that the bullying must occur over a period of seven days or more, causing harm or serious harm to the victim. Severe bullying causing serious harm would have attracted a maximum penalty of 10 years imprisonment. He mentions that the cases of Libby Bell, Cassidy Trevan and Brodie Panlock would fall within the ambit of causing serious harm to the victim.⁵⁴² Cases where lesser offending has occurred would attract a maximum penalty of 5 years imprisonment. He clarified that the goal of the Bill was not to limit freedom of speech or to create a provision in which minor incidences of bullying will carry a criminal penalty.⁵⁴³ The intention behind this legislation was to capture very serious and prolonged attacks of bullying. It was intended to be a bill for victims of bullying, but not for simple name calling or trivial issues.⁵⁴⁴ This Bill 'recognised the serious harm caused by bullying and creates an approach whereby serious actions would have had consequences'.⁵⁴⁵ When school bullies are not met with measures that require them to acknowledge and change their behaviours, their behaviours can continue into their workplace in their adult lives.⁵⁴⁶

There is a need for Western Australia to consider similar legislation specifically for bullying and cyberbullying. The Western Australian government should not wait to consider a legislation like this until a child or young person commits suicide due to school bullying and cyberbullying. A child does not need to die for the government of Western Australia to consider implementing an anti-bullying legislation. Legislation such as this is aimed at protecting victims of bullying and

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

⁵⁴² Ibid.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid 7664.

⁵⁴⁵ Ibid 7665.

⁵⁴⁶ Ibid.

punishing the bullies who would otherwise escape punishment. Legislation such as this will offer victims a way to seek justice, to show that there are options available to them, other than keeping quiet or committing suicide.

Honourable Mark Parnell, the founding member of the South Australian Greens party stated that bullying is a multifaceted problem and that the response to dealing with bullying lies within society and its behaviour and the way that young people are brought up. Hon. Mark Parnell also supported the Bill and stated that the law will play a role in response to bullying but it will not necessarily be the primary role since he did not believe that criminal law can be used to address bullying behaviour.⁵⁴⁷ Similarly, the Youth Affairs Council of South Australia, also opposed the Bill, stating that,

“The Bill will not make children and young people safer. The best way to deal with bullying is to prevent it. Programs that centre on strengthening families at a community level coupled with robust policies, procedures and responses within schools have a much greater chance of protecting children and young people”.⁵⁴⁸

A submission from the Commissioner for Children and Young People also stated that there are currently several policies and safety legislation in place to deal with severe bullying and cyberbullying.⁵⁴⁹ The Commissioner argued that South Australia should continue to use the current policies and legislations in place ‘than enact a new law that will further criminalise children’s behaviour at school’.⁵⁵⁰

Honourable John Darley, then member of the South Australian party in the Legislative Council, whilst supportive of the Bill mentioned concern about not enough being done with regards to bullying. Speaking on behalf of the Advance SA party, they stated that ‘having a big stick to punish people will not be enough to tackle the issue of bullying’,⁵⁵¹ and ‘turning bullying into a criminal offence is unlikely to have a definitive positive effect without more work to prevent this

⁵⁴⁷ South Australia, *Parliamentary Debates*, Legislative Council, 15 November 2017, 8463.

⁵⁴⁸ Ibid 8464.

⁵⁴⁹ Ibid.

⁵⁵⁰ Ibid.

⁵⁵¹ Ibid.

behaviour in the first place'.⁵⁵² Advance SA party believed that there needs to be a focus on educating the children about the effects of bullying and its consequences, as well as teaching children resilience so that they can learn how to cope with these matters. However, the party saw the benefit in having bullying as a criminal offence, especially when it is used as a deterrent in conjunction with the education programs on bullying for children.⁵⁵³

Western Australia should also take into account the need for both education programs and the need for making serious bullying a criminal offence. Criminalising bullying without preventing bullying in the first place is unlikely to have a positive effect, as mentioned above. While education is a form of bullying prevention, there is also a benefit of having bullying as a criminal offence to act as a deterrent. This would demonstrate that there are serious consequences that are available following the harmful effects of bullying another person. Western Australia should consider making bullying a criminal offence so it can act as a deterrent.

Honourable Senator Andrew McLachlan also supported the Bill and spoke about the penalty provisions of the Bill stating that these penalty provisions were 'drafted in a manner that retains judicial discretion'.⁵⁵⁴ This meant that there was a wide range of other sentencing options available to the courts when imposing a sentence, including good behaviour bonds, community service orders or fines.⁵⁵⁵

If Western Australia were to consider implementing such legislation, it is important to remember that bullying and cyberbullying does occur among school aged children. It is important that the legislation retain judicial discretion as the offence of bullying may apply to a school aged person. The wide range of sentencing options offer punishment for the bullying behaviour but should also take into consideration that imprisonment can cause damage to the future of school aged children. Therefore, imprisonment should only be used as a last resort and for serious cases of harm.

⁵⁵² Ibid.

⁵⁵³ Ibid.

⁵⁵⁴ Ibid 8465.

⁵⁵⁵ Ibid.

Honourable John Dawkins who represented the South Australian Division of the Liberal Party of Australia also showed support for the Bill but had brought attention to youth suicide. He stated that in cases of bullying, there are other issues that are going on in a young person's life that may lead them to suicide.⁵⁵⁶ He encouraged other members of the local government to get involved and educate themselves on the suicide prevention networks in South Australia, as well as a UK based organisation on youth suicide.⁵⁵⁷

Honourable Dennis Hood summarised by stating that the community cannot rely solely on legislation as the only way to address and prevent bullying. He stated that the best way and primary focus and defence in dealing with bullying is to prevent it through education programs within schools and the broader community.⁵⁵⁸

While Western Australian public schools do have intervention strategies to prevent bullying, as well as the implementation of education programs in the curriculum to teach students about bullying, there is always more work that can be done. This is demonstrated in the next chapter. Literature in Chapter 2 has shown that programs on empathy training have decreased incidences of bullying in schools. For schools in Western Australia to prevent bullying in schools, the education programs in schools should focus on building empathy and positive relationships with others, alongside educating the students about bullying and its effects.

Hon. Hood also stated that in the drafting of the Bill that there be a section that relates to cyberbullying. He mentioned that the internet and other electronic means is where a good deal of bullying occurs in modern times.⁵⁵⁹ He reiterated that back in the day, if a person was bullied in a school setting or workplace, it would be a terrible experience during the day but that they would be able to escape the bullying at night when they are safe in their own homes,⁵⁶⁰ however, it is much more difficult to escape bullying as the presence of social media and the connection to the internet can reach people in their homes and private spaces. He states that 'there is no escape in the modern world from this sort of activity in many cases and that can lead to very tragic

⁵⁵⁶ Ibid.

⁵⁵⁷ Ibid 8466.

⁵⁵⁸ Ibid.

⁵⁵⁹ Ibid 8467.

⁵⁶⁰ Ibid.

outcomes'.⁵⁶¹ He also made a comment stating that this Bill does not intend to curb free speech as bullying needs to recur over a minimum of 7 days and have deliberate intent to cause the victim harm. It is a prolonged attack on a person's character and is not a one-off situation, therefore displaying the difference between bullying and free speech.⁵⁶²

The Statutes Amendment (Bullying) Bill 2017 was passed in the Legislative Council and was received by the Legislative Assembly but had lapsed and has not been reintroduced or discussed in South Australian Parliament since then.⁵⁶³

This debate shows the harmful effects of cyberbullying as well as the need for legislative interventions specific to cyberbullying. A cyberbullying specific law will act as a better deterrent compared to the wide range of laws that currently cover cyberbullying. Western Australia should follow South Australia's lead and implement a cyberbullying law to further protect people and punish people who commit serious acts of bullying. The reports of victims that were unsupported by schools in South Australia demonstrate the need for legislative intervention for cyberbullying.

Reports of victims being unsupported by schools in South Australia

Hon. Dennis Hood when making his speech on the Statutes Amendment (Bullying) Bill 2017, shares accounts of families who had contacted him in regard to the bullying that their child had endured in South Australian schools.

One mother had contacted him stating that two of her children were bullied at the South Australian primary school that they attended. She reported that her children suffered physical abuse daily by their bullies, with one of her children suffering a fractured rib.⁵⁶⁴ She claimed that the bullying had gone unpoliced by staff, stating that the school did nothing.⁵⁶⁵ She also

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ Mark Bryan, 'What Happened to the Proposed Cyberbullying Laws in South Australia and Tasmania?' *School Governance by Complispace* (Web Page, 19 June 2019) <<https://www.schoolgovernance.net.au/news/what-happened-to-the-proposed-cyberbullying-laws-in-south-australia-and-tasmania>>.

⁵⁶⁴ South Australia, *Parliamentary Debates*, Legislative Council, 27 September 2017, 7664.

⁵⁶⁵ Ibid.

mentioned having to pull her children out of the school and that ‘it was easier for the school to get rid of the victim rather than to deal with the issue properly’.⁵⁶⁶

Another mother had reported a similar issue. She claimed that her daughter had been suffering from bullying inside and outside school grounds for at least a year before she was made aware.⁵⁶⁷ Her daughter who was aged 11 at the time, was told repeatedly by her bullies to kill herself. When she told the teacher of the bullying, the teacher refused to believe her. The teachers were unprepared and unaware of how to effectively deal with bullying.⁵⁶⁸ The school had knowledge of the bullying, but her bully was not reprimanded or disciplined in any way.⁵⁶⁹ The bully’s parents were also never contacted or notified of their child’s behaviour, even when requested by the victim. The mother reports that they were not supported by the school and were also not made aware of any processes in place that specifically dealt with bullying.⁵⁷⁰ She claimed that had she not removed her daughter from the school, she would not have known what could have happened or how far things could have gone.

Another person detailed their personal experience during high school. She mentioned that she was well known to school staff and was related to multiple people at high levels of authority at the school.⁵⁷¹ She was still bullied despite having these connections. Her bully was a close friend of hers who bullied anyone who had tried to be friends with her. Her bully had assigned people to follow her, taunt her and publicly humiliated her.⁵⁷² This left her feeling isolated. She often found solace hiding in toilets or in unlocked cars in the staff car park. She was even forced to do sexual favours and had complied for fear that negative reports would be given to her bully.⁵⁷³ She reported feeling tired, anxious, and depressed, stating she had no one to turn to, feeling like everyone knew what was going on but that no one had cared.⁵⁷⁴

⁵⁶⁶ Ibid.

⁵⁶⁷ Ibid.

⁵⁶⁸ Ibid.

⁵⁶⁹ Ibid.

⁵⁷⁰ Ibid.

⁵⁷¹ Ibid.

⁵⁷² Ibid 7665.

⁵⁷³ Ibid.

⁵⁷⁴ Ibid.

These accounts demonstrate that there is an issue with the schools and their inability to properly handle cases of cyberbullying. This also demonstrates how challenging bullying and cyberbullying is for schools to deal with. Schools need to be aware of the culture and environment they are setting for students when cyberbullying behaviours get left untreated. Schools have a responsibility to ensure a safe environment for children, as well as the duty of care to keep them safe. If schools fail to do so, this raises the issue that schools will need to be held accountable when cyberbullying cases that occur on their property are ignored. A way in which to increase the school's participation and responsibility with regard to bullying prevention has been the implementation of the state wide bullying prevention strategy in South Australia. In 2018, after extensive public consultations, the South Australian government released a state wide bullying prevention strategy called 'Connected – A community approach to bullying prevention within the school gates and beyond'.⁵⁷⁵

Connected: A community approach to bullying prevention within the school gates and beyond

In 2019, the South Australian State Government published a state-wide bullying prevention strategy aimed at strengthening the responses to children's bullying both within school grounds, as well as beyond the school gates. The South Australian government believe that bullying prevention requires the help of the whole community, thus following a community-based approach. The Department of Education worked with Catholic and Independent school sectors, as well as government departments and non-government organisations. Other partners that were involved include: the Attorney General's Department, the City of Playford, the Commissioner for Aboriginal Children and Young People, the Commissioner for Children and Young People, the Department for Child Protection, the Department of Human Services, Legal Services Commission, SA Health, South Australia Police, Youth Affairs Council of South Australia, and Youth Law Australia. This community-based approach also involves families, communities, and non-government partners to stand together to protect children and young people from bullying.⁵⁷⁶

In this community-based strategy, the State Government developed five key actions to deal with bullying in South Australia. Their bullying prevention model states that bullying is best

⁵⁷⁵ Government of South Australia (n 415).

⁵⁷⁶ Ibid.

addressed through modelling positive behaviours, challenging disrespectful behaviours, teaching conflict resolution and resilience, promoting inclusivity, and reducing power inequities in social groups.⁵⁷⁷ These five actions will guide all bullying prevention responses in South Australia.⁵⁷⁸ This is to ensure that there is a ‘coordinated and consistent response across government and non-government organisations’⁵⁷⁹ which will protect children and young people from bullying. In addition to South Australia’s state-wide bullying prevention response, the Department of Human Services and the Department for Child Protection, have both strengthened their legislative response to bullying by establishing bullying prevention guidelines in South Australian State legislation.⁵⁸⁰

It is clear in this community-based strategy that there is no one response that will end bullying. This strategy is supposed to help aid and strengthen the already existing bullying prevention responses in the education, health, and justice system in South Australia.⁵⁸¹ Traditionally, bullying is focused on how one person treats another, and thus the approaches for reducing bullying were focused on characteristics and traits of an individual that made them more likely to be victims of bullying, as well as more likely to be perpetrators of bullying.⁵⁸² Intervention responses were focused on responses to the bully and victim. Research has found that this view is too simple and fails to recognise that bullying is a social issue and that ‘bullying is embedded in social systems and structures, cultural experiences, community values and social relationships’.⁵⁸³ Bullying is prevalent when there is a weakened relationship between peers, family, or community.⁵⁸⁴ By strengthening the quality of social connections, the less likely bullying behaviours can affect them.

Factors that increase the likelihood of bullying are individual factors, social dynamics and social and cultural factors.⁵⁸⁵ For individual factors, any factor that sets a child apart from the rest of

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid 15.

⁵⁸⁰ Ibid 17.

⁵⁸¹ Ibid 15.

⁵⁸² Ibid 13.

⁵⁸³ Ibid.

⁵⁸⁴ Ibid.

⁵⁸⁵ Ibid 14.

the group, such as their religion, cultural background, sexual orientation and identity, and physical appearance, can put them at a higher risk of being victims of bullying.⁵⁸⁶ What children and their peer groups believe to be acceptable, comes from what they see in the wider community.⁵⁸⁷ As children learn through observation, if a child sees an adult engaged in aggressive bullying behaviours, the child is likely to imitate those behaviours. If the behaviours are accepted and produce a positive outcome, the behaviour will likely be repeated, thus if a child engages in bullying behaviour and is not challenged, or if the bullying results in a benefit, the behaviours will be repeated.⁵⁸⁸ Social dynamics refer to the way people interact with others in a group setting.⁵⁸⁹ Research has suggested that when a child feels pressure from a different setting, such as family conflicts, trauma or victimisation from family relationships, or poor peer relationships, they are likely to engage in bullying.⁵⁹⁰ Bullying may also be used as a tool to maintain social status.⁵⁹¹ Social and cultural factors can influence how people see themselves as well as influence how they interact with other people.⁵⁹² This can be absorbed through the media. This can also shape and influence a child's experience with bullying.⁵⁹³

In South Australia's bullying prevention explanatory model has a chart that states that bullying is driven by the quality of social connections which flows into the three factors that influence bullying (individual factors, social dynamic and social and cultural factors).⁵⁹⁴ The chart then flows into the five ways in which best addresses bullying (modelling positive behaviours, challenging disrespectful behaviours, teaching conflict resolution and resilience, promoting inclusivity, and reducing power inequities in social groups).⁵⁹⁵

⁵⁸⁶ Ibid.

⁵⁸⁷ Ibid.

⁵⁸⁸ Ibid.

⁵⁸⁹ Ibid.

⁵⁹⁰ Ibid.

⁵⁹¹ Ibid.

⁵⁹² Ibid.

⁵⁹³ Ibid.

⁵⁹⁴ Ibid 15.

⁵⁹⁵ Ibid.

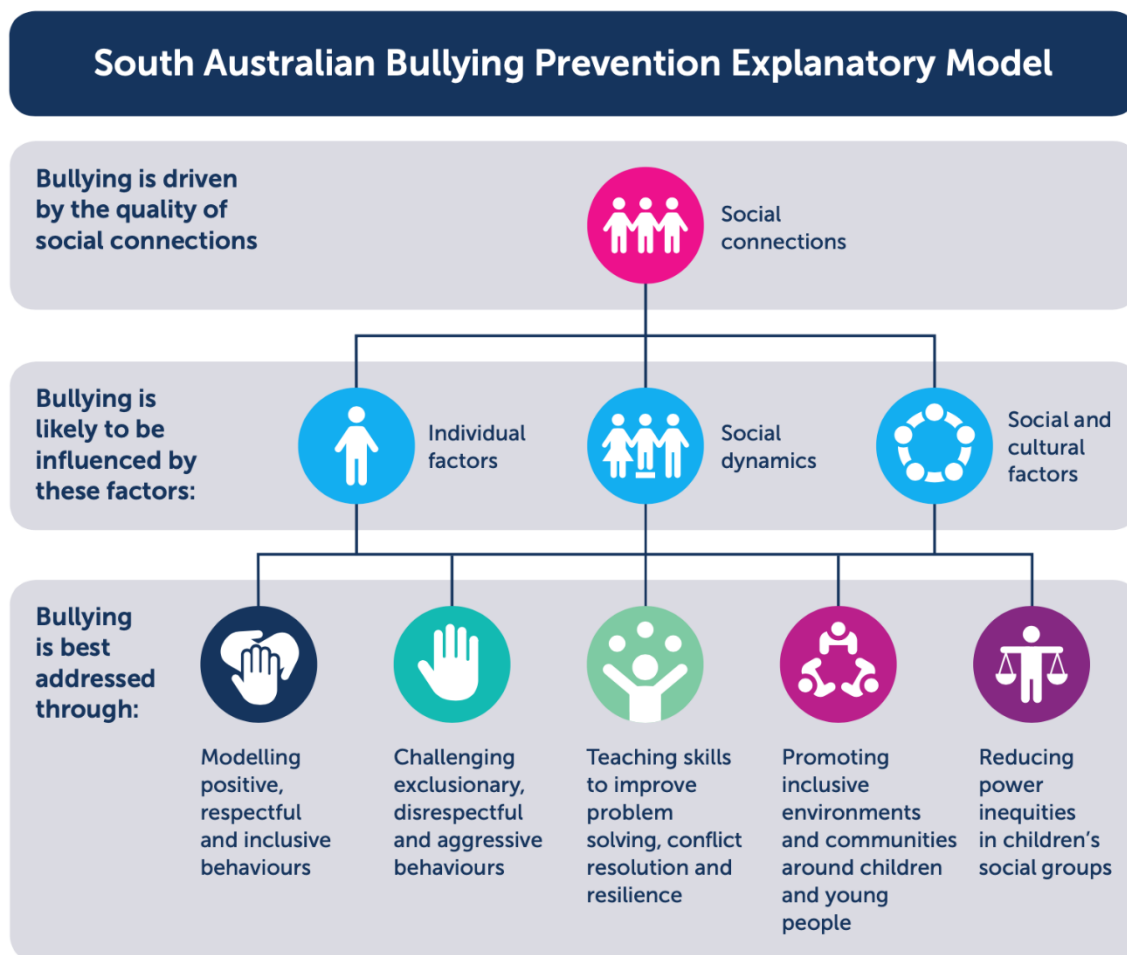


Figure 1 South Australian Bullying Prevention Explanatory Model⁵⁹⁶

The principles that underpin the way in which bullying will be addressed are:

- Having visible leadership that inspires positive environments for children where they feel respected and safe;
- Having communities that are inclusive and connected which values diversity and supports inclusion;
- Having children and young people be active participants in their own learning and wellbeing;
- Having educators, families and professionals and community members work together to support children and young people; and

⁵⁹⁶ Ibid.

- Having a community model that promotes, supports, and shares an understanding of positive and respectful behaviour.⁵⁹⁷

The first strategy is to have visible leadership that inspires positive environments for children where they feel respected and safe. In order to achieve this, schools and organisational leaders will ensure that they implement clear policies that reflect a commitment to providing a safe environment for children.⁵⁹⁸ Within the school gates, the initiative states that the education sector will help strengthen school leadership by supporting schools in adopting an anti-bullying policy. This policy should include the use of the national definition of bullying, list the steps in which the school will take to prevent bullying, outline how bullying can be reported and the steps taken in response to the bullying, and how the students involved with the bullying will be supported.⁵⁹⁹ In addition to this, school staff and educators will be equipped to respond to bullying. This is achieved through training on how to recognise and effectively respond to bullying, having access to resources on the different types of bullying, access to professional development modules and access to bullying prevention resources.⁶⁰⁰

Beyond the school gates, the Department of Human Services and the Department for Child Protection, aimed to strengthen the legislative responses with regard to bullying by establishing bullying prevention guidelines in the *Children and Young People (Safety) Act 2017*.⁶⁰¹ In the *Children and Young People (Safety) Act 2017* (SA), section 145(b)(ii) states that the Chief Executive's function is to 'provide guidance on matters relating to the protection of children and young people, including how to deal with cases involving the bullying or harassment of a child or young person'.⁶⁰² Other functions of the Chief Executive include 'developing codes of conduct and principles of good practice for caring for, or working with children and young people'⁶⁰³ as well as 'defining appropriate standards of care for ensuring the safety of children and young people'.⁶⁰⁴

⁵⁹⁷ Ibid 5.

⁵⁹⁸ Ibid 17.

⁵⁹⁹ Ibid.

⁶⁰⁰ Ibid.

⁶⁰¹ Ibid.

⁶⁰² *Children and Young People (Safety) Act 2017* s 145(b)(ii).

⁶⁰³ *Children and Young People (Safety) Act 2017* s 145(a).

⁶⁰⁴ Ibid s 145(c).

As the South Australian government both implemented a state wide approach to bullying prevention, as well as passed legislation which allowed for guidance on matters relating to child protection in cases of bullying and harassment, all public schools in South Australia should have a definition of bullying, bullying prevention strategies, how the school will respond to bullying incidences, and support systems in place for people involved in bullying incidences listed under their schools bullying policy.

The second strategy is having communities that are inclusive and connected which values diversity and support inclusion. School leaders need to recognise that children with disabilities, from culturally, linguistically and gender diverse backgrounds are at a greater risk of bullying.⁶⁰⁵ They must also be aware that bullying can stem from racism and discrimination. To combat this, school staff will have access to training on inclusive education practices, as well as on the needs of students from groups that are at high risk of bullying.⁶⁰⁶ They will also have access to training to support these students so that they are confident and skilled in supporting children's inclusion in learning.⁶⁰⁷ Beyond the school gates, the Department for Education will collaborate with local governments to pilot a recreation program for children and young people in the community.⁶⁰⁸ This program aims to encourage child involvement in the community and thus acts as a protective factor against bullying. The community recreation program for children can teach social skills, conflict resolution and problem solving.⁶⁰⁹

The third strategy is having children and young people be active participants in their own learning and wellbeing, which can lead to them feeling connected and empowered. By providing resources and curriculum content to school for children to learn about bullying, cyberbullying, online safety, socio emotional skills, resilience and help seeking skills, it can strengthen a child's knowledge and understanding of bullying and how to cope with it if they experience it.⁶¹⁰ The Department for Education will also work with the Youth Affairs Council of South Australia to

⁶⁰⁵ Government of South Australia (n 415).

⁶⁰⁶ Ibid.

⁶⁰⁷ Ibid.

⁶⁰⁸ Ibid.

⁶⁰⁹ Ibid.

⁶¹⁰ Ibid 21.

empower students to lead bullying prevention initiatives, such as implementing whole school bullying prevention initiatives that are student led and designed, as well as developing a train the trainer model, which enables children to develop skills and knowledge on how to deal with bullying, which leads to supporting and training other students in the process.⁶¹¹ Beyond the school gates, the establishment of independent statutory roles in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, includes a Commissioner for Children and Young People whose role is to advocate for the rights and interests of children and young people in South Australia.⁶¹² The Commissioner also promotes participation by children and young people in making decisions and recommendations on matters that relate to and affect their lives at a systemic level.⁶¹³ The government had also created a new position, Commissioner for Aboriginal Children and Young People for the needs of Aboriginal children and young people.

The fourth strategy is having educators, families and professionals and community members work together to support children and young people. Within the school gates, all pastoral care workers will participate in the eSafety Commissioners cyberbullying training so that they are skilled in supporting children and young people from bullying and cyberbullying issues.⁶¹⁴ The Department for Education will also provide education sessions and resources for parents on bullying at different ages, for children who are at greater risk of bullying, how to work with schools, what to do if their child gets bullied, or if their child bullies others.⁶¹⁵ Beyond the school gates, the Department for Education will promote community awareness on bullying prevention to ensure a common understanding as well as share responsibility throughout the community.⁶¹⁶ The South Australian government will raise community knowledge of bullying through SA Health (Parenting SA) Parent Easy guides, Parenting and Family Support programs, and legal services.⁶¹⁷ The Department for Education will collaborate with not-for-profit organisations to raise awareness of bullying within the community, they will also collaborate with SA Health through a Public Health Partner Authority to address bullying through a public health

⁶¹¹ Ibid.

⁶¹² Ibid.

⁶¹³ Ibid.

⁶¹⁴ Ibid 23.

⁶¹⁵ Ibid.

⁶¹⁶ Ibid.

⁶¹⁷ Ibid.

approach.⁶¹⁸ The Child and Adolescent Mental Health Service will provide mental health services to children and young people to address the needs that come from exposure to bullying.⁶¹⁹ The Department for Education will also provide grants to community organisations, as well as to public schools to collaborate with community partners, to promote bullying prevention for children.⁶²⁰

The last strategy is having a community model that promotes, supports, and shares an understanding of positive and respectful behaviour. As a child's behaviour is shaped and developed through observation and experiences, some children likely need more support to learn skills needed to behave in a respectful way as well as value others within the community.⁶²¹ Within the school gates, the strategies that will promote these behaviours are through effective bullying prevention and behaviour support policy and practice. The Department for Education will provide grants for public schools to implement evidence-based programs that address bullying as well as support positive behaviours. Such programs include the PEACE Pack program, as well as the Friendly Schools program.⁶²² The PEACE pack is a school-based intervention program that is aimed at reducing bullying within schools,⁶²³ and the Friendly Schools program is a strength based social and emotional wellbeing and bullying prevention program aimed at responding to bullying within schools.⁶²⁴ Educators with roles in supporting children's behaviour and wellbeing, will have access to professional development to increase their skill in responding to bullying, and restorative practices, as well as support school-based educators who require additional help and knowledge.⁶²⁵ Beyond the school gates, the South Australian Police will continue to enforce laws where bullying may constitute a criminal offence, such as assault, stalking, threats to cause harm, as well as humiliating and degrading and indecent filming, or threats to distribute invasive images.⁶²⁶ The Legal Services Commission will

⁶¹⁸ Ibid.

⁶¹⁹ Ibid.

⁶²⁰ Ibid.

⁶²¹ Ibid 25.

⁶²² Ibid.

⁶²³ Be You, 'The PEACE Pack' *Be You* (Web Page, 11 November 2021) <<https://beyou.edu.au/resources/programs-directory/t/the-peace-pack>>.

⁶²⁴ Be You, 'Friendly Schools' *Be You* (Web Page, 24 February 2022) <<https://beyou.edu.au/resources/programs-directory/f/friendly-schools>>.

⁶²⁵ Government of South Australia (n 415).

⁶²⁶ Ibid.

also continue to provide legal advice and assistance for children and young people with regard to matters of bullying.⁶²⁷ The five strategy initiatives will be implemented from 2019-2022.

The Government's 12-month progress report of *Connected: A Community Approach to Bullying Prevention Within the School Gates and Beyond*, has shown commitment and support for the five strategies by the South Australian community. While some strategies have not shown significant changes with regard to bullying prevention within the year of their implementation due to the process of trialling, other initiatives have shown a positive effect with regard to children's behaviour. For example, the Friendly Schools pilot program focused on the whole of school bullying prevention responses. In the pilot, staff and students used school data and design principles to come up with ways to reduce bullying at their school, such as increased supervision in areas that are prone to problematic behaviours, increasing student movement in congested areas of the school, and encouraging positive behaviours and social interactions through art, seating, sports, and nature play.⁶²⁸ The school staff have reported seeing less conflict in the school yard as well as better relationships within the school.⁶²⁹ Similar to the PEACE Pack, students from the schools that have trialled the pilot program had reported feeling safer, having fewer incidences of bullying, as well as gaining more skills to be able to deal with bullying.⁶³⁰ Students who were bullied before the completion of the program reported that there was a decrease in bullying by the end of the program. Students who were seriously bullied had also reported the same.⁶³¹ This reduction was sustained two months later. Teachers had enjoyed teaching the program and a majority had stated they intend to use the program again as well as recommend it to other schools.⁶³² Overall, this bullying prevention strategy has shown to be effective at reducing bullying within schools.

⁶²⁷ Ibid.

⁶²⁸ Government of South Australia, *12 Month Progress Report: Connected: A Community Approach to Bullying Prevention Within the School Gates and Beyond* (Report, 2020) 7
<<https://www.education.sa.gov.au/sites/default/files/12-month-progress-report-bullying-prevention-strategy.pdf>>.

⁶²⁹ Ibid.

⁶³⁰ Ibid.

⁶³¹ Ibid.

⁶³² Ibid.

P.E.A.C.E Pack program

The PEACE pack is an anti-bullying program that was pioneered in 2001 by Phillip Slee and Grace Skrzypiec.⁶³³ Bullying was an issue that piqued Phillip Slee's interest when he attended a presentation on bullying rates in Europe. He created a survey to investigate whether the same statistics for bullying had applied in Australia. He found that bullying 'is pervasive in Australian schools, worse than much of Europe'.⁶³⁴ He commented that over 100,000 kids are getting bullied every day and that if a child is a victim of bullying in primary schools, that there is a 53% chance that they will also be a victim of bullying in secondary school.⁶³⁵ When he first started his research into bullying, there were many widespread opinions stating that bullying 'builds character', 'teaches resilience' and 'doesn't do any harm', but his research has found that bullying has very harmful physical, emotional, and social consequences.⁶³⁶

The PEACE pack is a school based intervention program that is aimed at reducing bullying within schools. The program addressed bullying as well as promoted wellbeing and building resilience.⁶³⁷

The PEACE pack was founded on 5 principles:

1. Preparation and consideration of the nature of the problem,
2. Education and understanding of the issues by those concerned,
3. Action taken and strategies developed to reduce bullying,
4. Coping strategies which are implemented for staff, students, and parents, and
5. Evaluation and review of the program in place at the school.⁶³⁸

It was developed in collaboration with teachers, students, principals, as well as with parents and school administrators from day care centres, kindergartens, primary and secondary schools.

⁶³³ Newsdesk, 'PEACE Pack halves bullying at Adelaide school' *Flinders University* (Web Page, 9 February 2018) <<https://news.flinders.edu.au/blog/2018/02/09/peace-pack-halves-bullying-adelaide-school/>>.

⁶³⁴ Phillip Slee, 'Creating bully-free schoolyards' *Flinders University* (Web Page, 24 April 2019) <<https://www.flinders.edu.au/research/peace-pack-phillip-slee>>.

⁶³⁵ Ibid.

⁶³⁶ Ibid.

⁶³⁷ Be You (n 623).

⁶³⁸ Caper, 'Teachers & Schools' *Caper* (Web Page, 25 March 2019) <<https://www.caper.com.au/post/manage-your-blog-from-your-live-site>>.

There were also contributions made by representatives from primary and secondary schools who participated in focus groups over a period of two years to help develop, implement, and evaluate the intervention programs.⁶³⁹

The PEACE pack is a systemically based intervention. It was designed to provide a framework for schools to ‘assess the status of their anti-bullying policy in relation to policy grievance procedures, curriculum initiatives and student social support programmes’.⁶⁴⁰ The 5 principles (preparation, education, action, coping and evaluation) represents the stages in which form the program for reducing school bullying.⁶⁴¹

The goal of the program is to provide the school and staff with lesson content and curriculum resources that addresses the issue of bullying within the school and classroom, provides lesson content and curriculum resources to promote student wellbeing, promotes a whole school approach to address school bullying, as well as provide teachers with resources linked to the Student Wellbeing Hub, Be You, and Bullying No Way.⁶⁴² In the development of this program, Slee hoped that it would ‘teach students and staff about how to stop bullying, how to deal with it when it occurs, how to make students feel safe at school, and also how to reduce the likelihood of students joining in on bullying others’.⁶⁴³ He also states that ‘successful interventions to reduce school bullying and support the wellbeing of students are community focused, and teachers are absolutely central to the solution’.⁶⁴⁴

The aim of the program can be broken down into two parts. According to Slee, the first order seeks to change the individuals in the bully-victim cycle and builds on the skills needed to cope with bullying. There is also a focus on students with special needs as they are at a higher risk of experiencing bullying. The second order seeks to change the entire school culture. This part

⁶³⁹ Ibid.

⁶⁴⁰ Phillip T. Slee and Jury Mohyla, 'The PEACE Pack: an evaluation of interventions to reduce bullying in four Australian primary schools' (2007) 49(2) *Educational Research* 103, 105.

⁶⁴¹ Ibid.

⁶⁴² Be You (n 623).

⁶⁴³ Slee (n 634).

⁶⁴⁴ Newsdesk, 'Primary schools embrace PEACE Pack to tackle bullying' *Flinders University* (Web Page, 25 September 2018) <<https://news.flinders.edu.au/blog/2018/09/25/evidence-based-approach-tackles-bullying/>>.

looks at how the school relationships, policies and communication either encourage or discourage bullying.⁶⁴⁵

The program structure consists of 8 lessons over the course of 8 weeks, aimed at both primary and secondary school students.⁶⁴⁶ The topics in this program cover the issue of bullying, including cyberbullying, wellbeing, emotions, resilience, coping with bullying and cyberbullying, friendships, positive relationships, ethical understanding, intercultural understanding, self-concept, critical and creative thinking and optimism.⁶⁴⁷ In addition to this, the program also offers intensive professional development for teachers, school counsellors, and parents, student wellbeing, as well a comprehensive anti-bullying curriculum for the students.⁶⁴⁸

The program has since included a new manual to the PEACE pack which focuses on cyberbullying and the hazards of social networking. This new cyberbullying manual builds on the existing lesson in the initial PEACE pack. This new manual includes information on the law, issues associated with sexting and social media use, as well as tips for parents. More specifically the cyberbullying lesson includes information on abusive texts, social media impersonations, exclusion, sexting and sexual bullying, stalking, derogatory comments, content and more.⁶⁴⁹

In 2007, Slee and Mohyla conducted research to evaluate the effectiveness of the PEACE Pack program in reducing school bullying among children of primary school age. The sample comprised of students ranging from ages 5 to 14 years old in four Australian primary schools in Adelaide South Australia. The results of this study found that approximately one fifth of the students that participated had reported that they were bullied less after a yearlong implementation of the PEACE pack program.⁶⁵⁰ It was also reported that students knew more about how to stop being bullied as well as whom to talk to if they were getting bullied. Feelings

⁶⁴⁵ Ibid.

⁶⁴⁶ Education Matters, 'New evidence-based cyberbullying resource launched' *Education Matters* (Web Page, 2022) <<https://www.educationmattersmag.com.au/new-evidence-based-cyberbullying-resource-launched/>>.

⁶⁴⁷ Be You (n 623).

⁶⁴⁸ Newsdesk (n 633).

⁶⁴⁹ Newsdesk, 'PEACE Pack takes on cyberbullies and trolls' *Flinders University* (Web Page, 15 March 2019) <<https://news.flinders.edu.au/blog/2019/03/15/peace-pack-takes-on-cyberbullies-and-trolls/>>.

⁶⁵⁰ Slee and Mohyla (n 624).

of safety from being bullied at school had also improved.⁶⁵¹ Across the four schools, some schools had shown a large improvement with bullying, while others had modest improvements. Slee mentions that the strength of the program is that it can be modified and adapted to the particular context of the school.⁶⁵² The results of this study also found that males had reported being bullied less following the intervention, compared to females. This was suggested to be due to the type of school-based intervention that was used, such as one focused on direct forms of bullying, such as physical bullying, which are generally more associated with males.⁶⁵³ Whereas with females, indirect and relational bullying is more common but is often overlooked in school-based interventions.⁶⁵⁴

In 2018, the Education Minister of South Australia at the time John Gardner stated ‘the number of children and young people experiencing bullying on a regular basis is concerning, and we must do everything we can to stamp it out at the earliest opportunity’⁶⁵⁵ and that ‘our students deserve to undertake their studies in a safe and nurturing educational environment, free from harassment, discrimination and bullying’.⁶⁵⁶ He also stated that the pilot trials tested within South Australian primary schools was an important aspect of the South Australian government’s commitment to addressing the issue of bullying within the schools. Brighton Primary School was one of the 26 primary schools across South Australia that had taken part in the pilot. Early feedback had shown that it was having a positive effect.⁶⁵⁷

Wellbeing Leader Renee Book at Brighton Primary School stated that ‘students are benefiting from a much clearer understanding of what bullying is and the emotions that go along with it, so they’re learning how to recognise it and address it individually and among their peer group’.⁶⁵⁸ Brighton Primary School is looking to incorporate the PEACE pack into a whole school approach.⁶⁵⁹ One student who took part in the program stated that when she wished she could

⁶⁵¹ Ibid.

⁶⁵² Ibid.

⁶⁵³ Ibid 112.

⁶⁵⁴ Ibid.

⁶⁵⁵ Newsdesk (n 649).

⁶⁵⁶ Ibid.

⁶⁵⁷ Ibid.

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid.

have discovered the program earlier so that if she were to be bullied again, she would know how to deal with it. The program also encouraged her not to stand by when she witnessed other people getting bullied, and to do something about it.⁶⁶⁰

In 2014, the program was introduced to Brighton Secondary School because of bullying in the school yard. Although their school had an average level of bullying, similar to other secondary schools in Australia, it meant that statistically 1 in 5 students were being bullied at least once a week.⁶⁶¹ After its implementation, the school has seen a drop in bullying rates from 15-20% to 5%, which more than halved the incidences of bullying within the school.⁶⁶² Because of the significant improvements to the rate of bullying within the school as well as improvements to the school's schoolyard culture, Brighton Secondary School's Principal had agreed to continue using the pack for the 5th year (2019), with the goal to achieve zero bullying on their school grounds.⁶⁶³

Independent research and assessment have shown that the PEACE pack has reduced the level of victimisation and bullying across all schools that have implemented the program, as well as massive improvement in aspects such as wellbeing and school connectedness.⁶⁶⁴

The PEACE pack has been implemented in over 350 schools located in Australia Greece, Malta, Italy and Japan. Slee states that bullying is different in every country. In different cultures, places, and countries, bullying assumes different forms, therefore different methods and approaches are needed to address it.⁶⁶⁵ As bullying differs in each country, the program has been adapted to focus on issues that are most prevalent in that country or school culture.⁶⁶⁶ For example, in Japan bullying is heavily centred on exclusion with very little physical and verbal abuse. Bullying in Japan is more psychologically damaging compared to countries with different cultures. When the PEACE pack was introduced in Japan, the program was adapted to focus on

⁶⁶⁰ Alina Eacott, 'Anti-bullying program PEACE Pack reaching students across the globe' *ABC News* (Web Page, 30 June 2016) <<https://www.abc.net.au/news/2016-06-30/anti-bullying-peace-pack-reaching-students-across-the-globe/7557920>>.

⁶⁶¹ Slee (n 634).

⁶⁶² Newsdesk (n 633).

⁶⁶³ Ibid.

⁶⁶⁴ Newsdesk (n 649).

⁶⁶⁵ Eacott (n 660).

⁶⁶⁶ Slee (n 634).

exclusion and group dynamics.⁶⁶⁷ There are also differences across school age groups. Slee's research has found that self-esteem for girls drops between the ages of 13 to 15, whereas for boys it increases. The PEACE pack can be adapted to accommodate these issues.⁶⁶⁸

If preventative measures are still not enough to prevent cyberbullying, and should the victim decide to take legal action, there are a range of criminal and civil offences that cover the effects of cyberbullying. Like Western Australia, South Australia also does not have legislation specific to cyberbullying, however, the closest to cyberbullying would be their stalking offence.

Current South Australian civil and criminal offences for cyberbullying

As mentioned above in the second reading speech, the Commissioner for Children and Young People submitted that there are currently a 'number of policies, criminal law and wellbeing and safety legislation in place to deal with severe and extensive bullying and cyberbullying'.⁶⁶⁹ It is the Commissioners view that South Australia should continue to use the current avenues in place than enact a new legislation.⁶⁷⁰

Currently, in South Australia, there are a range of potential criminal offences which can make the act of bullying and cyberbullying a criminal offence. If the bully threatens or assaults the victim or uses the internet to harm or harass the victim, it may constitute as a criminal offence, and fall under one of South Australia's existing criminal laws. For the act of bullying to be considered a criminal offence, it must satisfy all the elements needed under that offence. Some of the potential criminal offences in South Australia that bullying behaviour may fall into are assault, stalking, cyberstalking, distribution of invasive images, unlawful threats, criminal liability for suicide, criminal defamation, theft and receiving, humiliating, or degrading filming.

Under the *Criminal Law Consolidation Act 1935*, section 20 describes assault. Assault occurs when a person without consent from the other person, intentionally applies force or makes physical contact either directly or indirectly, to the victim.⁶⁷¹ Under this section, assault can also

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid.

⁶⁶⁹ South Australia, *Parliamentary Debates*, Legislative Council, 15 November 2017, 8464.

⁶⁷⁰ Ibid.

⁶⁷¹ *Criminal Law Consolidation Act 1935* (SA) s 20.

occur without physical contact. If a person threatens to apply force either by words or conduct, and the victim reasonably believes that there is a real possibility that the person will carry out the threat, also constitutes as assault.⁶⁷² Both bullying and cyberbullying can be an offence under this section. Assault under this section also includes when a person accosts or impedes another in a threatening manner.⁶⁷³ Conduct that is within the limits of accepted and normal incidences of social interactions within the community would not amount to assault, such as pushing between others to get out of a crowded bus. The maximum penalty for a basic offence is imprisonment for 2 years.⁶⁷⁴ For an aggravated offence the penalty is imprisonment for 3 years.⁶⁷⁵ An aggravated offence by the use of, or a threat to use an offensive weapon has a penalty of imprisonment for 4 years.⁶⁷⁶

Section 19AA of the *Criminal Law Consolidation Act 1935*, describes unlawful stalking. Under this section, a person stalks another person if, on at least two separate occasions, the person follows the other person, gives or sends offensive material to the other person, leaves offensive material where it will be found by, given or brought to the attention of the other person, publishes or transmits offensive materials by means of the internet or some other form of electronic communication, communicating with the other person by mail or telephone, internet or other form of electronic communication that could reasonably be expected to arouse apprehension or fear in the other person.⁶⁷⁷ The maximum penalty for a basic offence of unlawful stalking is imprisonment of 3 years, and for an aggravated offence the penalty is imprisonment for 5 years.⁶⁷⁸

There are similarities with sections under 19AA(1)(a)(iva) and (ivb) of the *Criminal Law Consolidation Act 1935* and section 20A(2)(d) and (e) of the Statutes Amendment (Bullying) Bill 2017. Both the Act and Bill include:

⁶⁷² Ibid s 20(1)(c).

⁶⁷³ Ibid s 20(1)(e).

⁶⁷⁴ Ibid s 20(3)(a).

⁶⁷⁵ Ibid s 20(3)(b).

⁶⁷⁶ Ibid s 20(3)(c).

⁶⁷⁷ Ibid s 19AA(1)(a).

⁶⁷⁸ Ibid s 19AA(2).

“Publishes or transmits offensive material by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the other person”⁶⁷⁹ and

“Communicates with the other person, or to others about the other person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication in a manner that could reasonably be expected to arouse apprehension or fear in the other person”.⁶⁸⁰

Under the *Criminal Law Consolidation Act 1935*, these definitions fall under stalking but in the Statutes Amendment (Bullying) Bill 2017, these definitions fall under bullying. Both sections under the Act and Bill can apply to both bullying and cyberbullying offences. Under the Statutes Amendment (Bullying) Bill 2017, section 20A(2)(e) containing ‘publishes or transmits offensive material by means of the internet or some other form of electronic communication’ was intended to cover situations of cyberbullying, as mentioned in Hansard.

Under the *Summary Offences Act 1953*, section 26C a person who distributes an invasive image of another person, knowing or having reason to believe that the other person did not consent to the distribution of the image is guilty of an offence.⁶⁸¹ Under this Act, invasive image is described as an image of a person in a place other than a public place engaged in a private act or in a state of undress, such as bare genitals or anal region and for females, the definition includes bare breasts that are visible.⁶⁸² Images that are generally accepted by reasonable adults in the community and fall within the standards of morality are not considered invasive images.⁶⁸³ Distributing invasive images of another person without their consent to its distribution is also known as revenge porn.⁶⁸⁴ Revenge porn or image-based abuse is a form of cyberbullying and can also be investigated by the eSafety Commissioner. There are also criminal offences relating to the distribution of invasive images at the Commonwealth level. If the invasive image is of a

⁶⁷⁹ Ibid s 19AA(1)(a)(iva).

⁶⁸⁰ Ibid s 19AA(1)(a)(ivb).

⁶⁸¹ *Summary Offences Act 1953* (SA) s 26C(1).

⁶⁸² Ibid s 26A(2).

⁶⁸³ Legal Services Commission South Australia, ‘Distribution of invasive images’ (Web Page, 10 December 2018) <<https://lawhandbook.sa.gov.au/print/ch12s09.php#Ch2078Se301876>>.

⁶⁸⁴ Ibid.

person under the age of 17 years old, the maximum penalty is \$20,000 or imprisonment for 4 years. In any other case, the maximum penalty is \$10,000 or imprisonment for 2 years.⁶⁸⁵

Under section 26B of the *Summary Offences Act 1953*, it is an offence to engage in humiliating or degrading filming.⁶⁸⁶ A person who distributes an image obtained by the humiliating or degrading filming knowing the victim does not consent to the distribution of the image is also guilty of an offence.⁶⁸⁷ Under this Act, humiliating or degrading filming is described as the filming of a person while they are being subjected to or compelled to engage in, a humiliating or degrading act.⁶⁸⁸ This definition does not include people who consent to being subjected to humiliating or degrading acts and consent to the filming of the act.⁶⁸⁹ The maximum penalty for engaging in humiliating or degrading filming and its distribution is imprisonment for 1 year.⁶⁹⁰ However, if the person takes part in the humiliating or degrading act that is filmed of another person being humiliated or degraded, as well as taking part in the distribution of the image or images obtained from the filming, the maximum penalty is imprisonment for 2 years.⁶⁹¹

Under section 26D of the *Summary Offences Act 1953* is an offence to engage in indecent filming.⁶⁹² Under this Act, indecent filming refers to the filming of a person in a state of undress in circumstances where a reasonable person would expect privacy, the filming of a person engaged in a private act, or the filming of another person's region.⁶⁹³ Distribution of an image obtained by indecent filming is also an offence.⁶⁹⁴ If the person filmed was under the age of 17 years old, the maximum penalty is \$20,000 or imprisonment for 4 years. In any other case, the maximum penalty is \$10,000 or imprisonment for 2 years.⁶⁹⁵

⁶⁸⁵ *Summary Offences Act 1953* (SA) s 26C(1).

⁶⁸⁶ *Summary Offences Act 1953* (SA) s 26B(1).

⁶⁸⁷ *Ibid* s 26B(2).

⁶⁸⁸ *Ibid* s 26A(1).

⁶⁸⁹ *Ibid*.

⁶⁹⁰ *Ibid* s 26B(1) and (2).

⁶⁹¹ *Ibid* s 26B(3).

⁶⁹² *Summary Offences Act 1953* (SA) s 26D(1).

⁶⁹³ *Ibid* s 26A(1).

⁶⁹⁴ *Ibid* s 26D(3).

⁶⁹⁵ *Ibid* s 26D(1).

Under section 26DA of the *Summary Offences Act 1953* it is an offence to threaten to distribute invasive images or images obtained from indecent filming, and if the person intends to arouse fear that the threat will be or is likely to be carried out, or is recklessly indifferent as to whether fear is aroused.⁶⁹⁶ The threat can be directly or indirectly communicated, either written or spoken, or by conduct, which may be explicit or implicit.⁶⁹⁷ If the invasive image is of a person who is under the age of 17 years old, the maximum penalty is \$10,000 or imprisonment for 2 years. In any other case, the maximum penalty is \$5,000 or 1 year imprisonment.⁶⁹⁸

Under section 63 of the *Criminal Law Consolidation Act 1935*, a person who produces or disseminates or takes any step in the production or dissemination of child exploitation material, knowing of its pornographic nature is guilty of an offence.⁶⁹⁹ Under section 62, child exploitation material refers to material that describes or depicts a child under the age of 17 years old engaging in sexual activity, or the image or representation of the child's body or body parts, that is of a pornographic nature.⁷⁰⁰ Pornographic nature refers to materials that are intended to excite or gratify sexual interest.⁷⁰¹ Dissemination means to send, supply, sell, exhibit, distribute, transmit or communicate, to another.⁷⁰² For the production or dissemination of child exploitation material, the maximum penalty for a basic offence is imprisonment for 10 years, and for an aggravated offence it is imprisonment for 12 years.⁷⁰³

Under section 63A of the *Criminal Law Consolidation Act 1935*, a person who is in possession of child exploitation material knowing of its pornographic nature or intending to obtain access to the material, is guilty of an offence.⁷⁰⁴ The maximum penalty for a first offence, if it is a basic offence, is imprisonment for 5 years, while an aggravated offence is imprisonment for 7 years. If it is a subsequent offence, the maximum penalty for a basic offence is imprisonment for 7 years, and for an aggravated offence it is imprisonment for 10 years.⁷⁰⁵

⁶⁹⁶ *Summary Offences Act 1953* (SA) s 26DA(1).

⁶⁹⁷ *Ibid* s 26DA(4).

⁶⁹⁸ *Ibid* s 26DA(1).

⁶⁹⁹ *Criminal Law Consolidation Act 1935* (SA) s 63.

⁷⁰⁰ *Ibid* s 62.

⁷⁰¹ *Ibid* s 62.

⁷⁰² *Ibid* s 62.

⁷⁰³ *Ibid* s 63.

⁷⁰⁴ *Criminal Law Consolidation Act 1935* (SA) s 63A(1).

⁷⁰⁵ *Ibid*.

Under section 63B of the *Criminal Law Consolidation Act 1935*, it is also an offence if a person procures or incites the commission of an indecent act by a child, or acting for a prurient purpose causes a child to expose any part of their body or makes a photographic or electronic record of which images of the child engaged in the private act may be reproduced.⁷⁰⁶ Under the Act, a prurient purpose means to act with the intention of satisfying their own desire for sexual arousal or gratification.⁷⁰⁷ A private act means a sexual act, or an act involving intimate bodily function, or activity involving nudity or exposure of sexual organs.⁷⁰⁸ Section 63B(1) is still an offence even if the acts to constitute the offence occurs in private or public, or if the acts occur with or without the consent of the child, or the child's parents or guardian.⁷⁰⁹ The maximum penalty for a basic offence is imprisonment for 10 years and for an aggravated offence it is imprisonment for 12 years.⁷¹⁰

Unlawful threats can be found under section 19 of the *Criminal Law Consolidation Act 1935*, which states that a person who threatens without a lawful excuse, to kill or endanger the life of another and intends to arouse fear that the threat will be or is likely to be carried out, is guilty of an offence.⁷¹¹ The threat can be communicated by words directly or indirectly, either written or spoken or by conduct. An expression of emotions that does not intend to cause fear is not a threat to do harm. The maximum penalty for a basic offence of unlawful threats is imprisonment for 10 years, while the penalty for an aggravated offence is imprisonment for 12 years.⁷¹² Under section 19, it is also an offence if a person threatens without a lawful excuse, to cause harm to another person and intends to arouse fear that the threat will be or is likely to be carried out.⁷¹³ The maximum penalty for a basic offence is imprisonment for 5 years and for an aggravated offence is it imprisonment for 7 years.⁷¹⁴

⁷⁰⁶ *Criminal Law Consolidation Act 1935* (SA) s 63B(1).

⁷⁰⁷ *Ibid* s 62.

⁷⁰⁸ *Ibid*.

⁷⁰⁹ *Ibid* s 63B(2).

⁷¹⁰ *Ibid* s 63B(1).

⁷¹¹ *Criminal Law Consolidation Act 1935* (SA) s 19(1).

⁷¹² *Ibid*.

⁷¹³ *Ibid* s 19(2).

⁷¹⁴ *Ibid*.

Criminal liability in relation to suicide is found in section 13A of the *Criminal Law Consolidation Act 1935*, which makes it an offence for a person to aid, abet or counsel the suicide of another person, or an attempt by another person to commit suicide.⁷¹⁵ Under this section, it is not an offence to commit or attempt to commit suicide.⁷¹⁶ If a person finds another person about to commit an act that would result in suicide, they are justified in using reasonable force to prevent the completion of the act.⁷¹⁷

Criminal defamation is found in section 257 of the *Criminal Law Consolidation Act 1935*, which states that when a person without a lawful excuse, published defamatory matters concerning another living person knowing the matter to be false, or being recklessly indifferent to whether the matter is true or false, and intends to cause serious harm, or being recklessly indifferent as to whether the publication of the defamatory matter will cause serious harm, is guilty of the offence of criminal defamation.⁷¹⁸ The maximum penalty for criminal defamation is imprisonment for 3 years.⁷¹⁹

The provisions of the SA *Criminal Law Consolidation Act* and *SA Summary Offences Act* that may apply to cyberbullying are summarised in Tables 3 and 4 below.

Table 3 SA *Criminal Law Consolidation Act* laws that apply to cyberbullying

Section	Detail	Penalty	How it can apply to bullying and cyberbullying?
S 20 Assault	A person intentionally applies force or makes physical contact either directly or indirectly, to the victim without consent. Assault can also occur without	2 years imprisonment, or 3 years imprisonment for an aggravated offence,	Bullies who physically harm the victim or threaten to harm them

⁷¹⁵ *Criminal Law Consolidation Act 1935* (SA) s 13A(5).

⁷¹⁶ *Ibid* s 13A(1).

⁷¹⁷ *Ibid* s 13A(2).

⁷¹⁸ *Criminal Law Consolidation Act 1935* (SA) s 257(1).

⁷¹⁹ *Ibid*.

	physical contact, such as by threat.		
S 19AA Unlawful stalking	A person who stalks another person if on at least two separate occasions, follows, gives or sends offensive material, leaves offensive material where it will be found by, given or brought to the attention of the other person, publishes or transmits offensive materials by means of the internet or electronic communication, that could reasonably be expected to arouse apprehension or fear in the other person	3 years imprisonment, or 5 years imprisonment for an aggravated offence,	Cyberbully who publishes offensive materials about the victim online or sends them offensive materials.
S 63 Production or dissemination of child exploitation material	A person who produces or disseminates child exploitation material knowing of its pornographic nature	10 years imprisonment, or 12 years imprisonment for an aggravated offence	People who groom children online with the intent to produce and distribute child exploitation material, or sexting
S 63A Possession of child exploitation material	A person who is in possession of child exploitation material knowing of its pornographic nature	7 years imprisonment, or 10 years imprisonment for an aggravated offence	People who groom young people online with the intent possess child exploitation material
S 63B Procuring child to commit indecent act etc	A person who procures or incites the commission of an indecent act by a child or causes a child to expose any part of their body	10 years imprisonment, or 12 years imprisonment for an aggravated offence	People who groom young people online with the intent to use them for child exploitation material, such as sexting
S 19 Unlawful threats	A person who threatens without a lawful excuse, to kill or endanger the life of another and intends to arouse fear	5 years imprisonment, or 7 years imprisonment for an aggravated offence	Cyberbullies who threaten to kill the victim

	that the threat will be carried out		
S 13A Criminal liability in relation to suicide	A person who aid, abet or counsel the suicide of another person, or an attempt by another person to commit suicide	14 years imprisonment if the person commits suicide, 8 years if suicide was attempted	Cyberbullies who persuade young people to commit suicide
S 257 Criminal defamation	A person who publishes defamatory matters concerning another living person knowing the matter to be false, and intends to cause serious harm	3 years imprisonment	Cyberbullies who publish and spread false information online

Table 4 SA *Summary Offences Act* laws that apply to cyberbullying

Section	Detail	Penalty	How it can apply to bullying and cyberbullying?
S 26C Distribution of invasive image	A person who distributes an invasive image of another person without their consent.	\$10,000 fine or 2 years imprisonment. but if the person is under 17 years old, \$20,000 or 4 years imprisonment.	Cyberbullies who share or distribute intimate images of the victim without their consent, such a revenge porn.
S 26B Humiliating or degrading filming	A person who distributes an image obtained by the humiliating or degrading filming without the other person's consent.	1 year imprisonment	Cyberbullies who share or distribute intimate images of the victim without their consent.
S 26DA Threat to distribute invasive image or image obtained from indecent filming	A person who threatens to distribute invasive images or images obtained from indecent filming with intention to arouse fear that it will be carried out.	\$5,000 or 1 year imprisonment, but if the person is under 17 years old, \$10,000 or 2 years imprisonment.	Cyberbullies who threaten share or distribute intimate images of the victim without their consent.

In South Australia, cyberbullying can fall under offences of assault, stalking, image based abuse or the distribution of those images, and in some cases possession of child exploitation material, its procurement as well as its dissemination. If a bully makes a threat that they will physically harm the victim, and the victim believes that there is a real possibility that the bully will carry out the threat or is able to carry out the threat and intends to do so, it is an offence of assault. If a bully sends offensive materials to the victim, or publishes the offensive materials through any form of electronic communication which is intended to cause fear in the victim, it is an offence of unlawful stalking. If the bully distributes invasive images of the victim where the victim did not consent to its distribution, it is an offence. If a bully is in possession of images (such as through sexting) where the victim is a child or is under 17 years of age and the image shows the victim engaging in sexual activity, they are guilty of an offence. It is also an offence if the bully encourages or procures the victim to commit an indecent act if the victim is under the age of 17. If the bully sends, distributes, or communicates the child exploitation material to another, or takes any step to do so, they are guilty of an offence.

In relation to bullying that occurs within the school grounds, the school may have an existing anti-bullying policy or complaints policy which they will use to resolve the bullying issue, however, there are some potential disciplinary actions that can also be taken at the school level which include suspension, exclusion and expulsion, the duty of care with regards to accidents and injuries at school, and different avenues for complaints about the school.

The range of criminal offences in South Australia is also able to cover cyberbullying offences better than the criminal offences in Western Australia, for example, the offence of stalking in South Australia, a person who publishes or transmits offensive materials using the internet or some other form of electronic communication, communicating with the other person by mail or telephone, internet or other form of electronic communication that could reasonably be expected to arouse apprehension or fear in the other person⁷²⁰, is committing an offence. If a person publishes and transmits offensive materials through the internet or other form of electronic communication, it is a form of cyberbullying. In Western Australia's stalking offence, the wording is limited to repeated communication, directly or indirectly in words or otherwise. The

⁷²⁰ Ibid s 19AA(1)(a).

wording of the section should include language that offers coverage for cyberbullying offences, such as communications using the internet or other form of electronic communication.

If a student is violent or is a threat to the safety of the staff and students at the school, they can be suspended, excluded, or expelled from the school. According to section 26 of the *Education and Children's Services Regulation 2020* (SA), to determine whether to suspend, exclude or expel a student, the principal of the school or the Chief Executive must have regards to the severity and frequency of the misbehaviour, the student's prior record of the behaviour and responses to previous sanctions and if relevant, how much adjustments have been made to support the participation of that student at the school.⁷²¹

When bullying or cyberbullying at school occurs, there is a duty of care that is owed to the students by the school. Schools are required to have measures that are reasonable to prevent injury to their students, such as adequate supervision in the school yard. When matters of bullying behaviours are not dealt with by the school, it is expected that the parents of the victim of bullying would complain to the school with regards to how they handled or did not handle the matter. The complaint should be brought to the relevant teacher or principal of the school. As required for a child safe environment, all schools in South Australia should have policies in place that detail how matters will be handled, how complaints can be raised as well as how the complaints will be responded to. As required under the *Children and Young People (Safety) Act 2017*, prescribed organisations such as a school, must develop policies and procedures that ensure a child safe environment.⁷²² If the parent is unsatisfied with the school's response to the complaint, the next cause of action would be to raise their concerns with the governing body of the school, such as the Department for Education for public schools, or the Association of Independent Schools of South Australia, or Catholic Education South Australian for private schools. The Department for Education in South Australia has a feedback and complaints section, where it guides parents to raise their concerns with the leader of the school (the school Principal, Deputy Principal) first before making a complaint with the Department for

⁷²¹ *Education and Children's Services Regulation 2020* (SA) s 26.

⁷²² *Children and Young People (Safety) Act 2017* (SA) s 114(1)(b).

Education.⁷²³ If the parent is unsatisfied with the Department for Education's complaint unit, a complaint can then be made to the South Australian Ombudsman. It is important to note that before any legal action is taken, the parents or guardians must try to resolve the issue with the school first.

When a child is under the control of the school, there is a duty of care that is owed by the school to the child to ensure their safety. With regards to bullying, under the school's duty of care, they must ensure that there is enough supervision of the students to make sure that if bullying does occur, that they are observed and dealt with as soon as possible. In some cases, this duty of care can extend beyond the school grounds. If a student suffers an injury at the school, the school would be liable for the injury if the school did not provide adequate supervision, or if reasonable precautions of dangers were not taken. To show that the school's negligence had caused an injury to the student under their care, the student would have to prove that the school owed a duty of care to the student. They would also have to prove that the school by not acting in a reasonable standard as they should in the circumstance, had breached that duty of care to the student. The student must prove that the injury that they had suffered was caused by the school's breach of their duty of care to the student, then as a result of the breach, the student had suffered an injury.

Other forms of civil action that can be taken under South Australian law can include intervention orders. An intervention order can be made if it is reasonable to suspect the person that the order will be against their will, without intervention, commit an act of abuse, and that the issuing of the order is appropriate in the circumstances.⁷²⁴ Abuse includes physical, sexual, emotional, psychological or economic abuse.⁷²⁵ An act of abuse are acts that result in physical injury, emotional or psychological harm, unreasonable and non-consensual denial of financial, personal, or social autonomy, or damage to property owned or in the possession of the person.⁷²⁶ In the case of bullying and cyberbullying, emotional and psychological harm include giving or sending

⁷²³ South Australia Department for Education, 'Feedback and complaints about a school or preschool' (Web Page, 2021) <<https://www.education.sa.gov.au/department/about-department/contact-department/feedback-and-complaints-about-school-or-preschool>>.

⁷²⁴ *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 6.

⁷²⁵ *Ibid* s 8(1).

⁷²⁶ *Ibid* s 8(2).

offensive materials using the internet or any other form of electronic communication, or communicating with the person by mail, telephone, internet or other form of electronic communication in a manner that is reasonably expected to cause emotional or psychological harm to the person, taking an invasive image of the person and threatening to distribute the image without the person's consent. Some terms of the intervention order can include prohibiting the defendant from being within the same vicinity or premises as the protected person, prohibiting the defendant from contacting, harassing, threatening or intimidating the protected person, or any other requirement.⁷²⁷

If the parents of the victim of bullying or cyberbullying are unhappy with how the school dealt with the bullying and have made complaints to the school, they have a wide range of avenues to further their complaint, such as contacting the police, contacting the local community legal centre, taking legal action through civil or criminal law or by reporting to the ombudsman. There are also federal laws in place. If parents choose not to pursue matters legally with regards to bullying and cyberbullying, there are a range of free online counselling and support helplines available such as Kids Helpline, eHeadspace, Lifeline, 1800RESPECT or QLife. The eSafety Commissioner can also aid in the take down of serious online abuse as well as any illegal and restricted online content.

3.4 Conclusion

The differences between Western Australia and South Australia's approach towards bullying and cyberbullying prevention are apparent. The specific offences that cover cyberbullying in each state are vastly different, for example, the offence of stalking. South Australia's offence for stalking provides more scope to cover bullying and cyberbullying as an offence. While both states require schools to implement policies regarding bullying, Western Australia is only required by the Department of Education, whereas South Australia is required by state legislation. The impact of this difference is shown in the next chapter.

⁷²⁷ Ibid s 12(1).

CHAPTER FOUR

Research and results of WA and SA anti-bullying policies

This chapter explores the differences in schools' anti-bullying policies between South Australia and Western Australia. A sample of public high schools in Western Australia is compared with a sample of public high schools in South Australia.

Part 4.1 explains the sample selections and explores the first research question of whether Western Australian public high schools openly display policies pertaining to bullying and cyberbullying in comparison to South Australian high schools. A comparative analysis identifying similarities and differences between Western Australian and South Australian high school bullying and cyberbullying policies is further undertaken in Part 4.2. Part 4.3 concludes that while some Western Australian public high schools do openly display policies pertaining to bullying and cyberbullying, the overall sample when compared to South Australia, does not openly display their bullying and cyberbullying policies to the same standard as South Australia.

4.1 Sample Selection of Western Australian and South Australian public high schools

Western Australia

When conducting the research on high school bullying and cyberbullying policies in Western Australia, the scope of the research was set as follows. Firstly, the schools analysed had to be classed as a high school. In Western Australia, high schools start at year 7 and end at year 12. Accordingly, this range was set. As mentioned in Chapter 2, the literature suggests that cyberbullying is most prevalent in children aged 13-15 years old, i.e., high school students in years 7 to 9. Therefore, primary schools were excluded from the research sample. High schools only teach year 11 to year 12 were not included in the study as it excluded the age range of 13-15 year old students, and did not meet the year 7 to year 12 criteria. Schools that start from kindergarten to year 12 were included in the study. Secondly, only public schools were included.

This included independent public schools and senior high schools. Thirdly, the public high schools had to fall within the north and south metropolitan areas of Perth. 65 public high schools in the Perth metropolitan area met these criteria.

The criteria used to explore the public high schools' anti-bullying policies in both states included five main sections.

- i. Whether the high schools publicly displayed an anti-bullying policy on their school website;
- ii. Whether the policy included a definition of bullying in their policy;
- iii. Whether they listed strategies for interventions, monitoring of the behaviours, or prevention approaches in their policy;
- iv. Whether they included the rights and responsibilities of staff, students and parents when dealing with bullying behaviours;
- v. Whether there was a separate definition for cyberbullying.

Although cyberbullying is a subset of bullying, according to the literature as detailed in Chapter 2, cyberbullying has more detrimental and long-lasting effects when compared to traditional bullying. As most policies describe cyberbullying as a form of bullying, it was important to determine which high school policies made the distinction between bullying and cyberbullying as two separate issues.

Preliminary research on the 65 public high schools in Western Australia found that 34 out of 65 (52%) of these high schools had an anti-bullying policy publicly displayed on their school website.⁷²⁸ Interestingly, the names of these policies on the schools' websites ranged from 'Bullying Policy' and 'Anti-bullying and Harassment Policy' to 'Positive Behaviour Policy' and 'Behaviour Management Policy'. This is interesting as Western Australia's Department of Education required schools to implement a plan that supports positive student behaviour. The schools that title their policies 'Positive Behaviour Policy' and 'Behaviour Management Policy'

⁷²⁸ One out of the 34 publicly displayed policies could not be accessed on the school's website without a parent/school log in, therefore will be excluded from the research study sample.

include their bullying policy within the document. When compared to South Australia, a majority of the policy name are titled 'Bully and Harassment policy' (See Appendix 4 and 5).

Looking at all Western Australian public high schools in the metropolitan area, it was found that 32 out of 65 (49%) school policies had a definition of bullying in their policy. Strategies for intervention, monitoring, or prevention of bullying were found in 24 out of 65 (37%). These range from simple intervention and monitoring strategies to school wide intervention strategies and targeted early intervention strategies. Seventeen out of 65 (26%) listed the rights and responsibilities of students, staff, and parents in their anti-bullying policy, and only three out of 65 (5%) defined cyberbullying as a separate issue to bullying. Significantly, only one out of the 65 (2%) public high schools sampled in Western Australia's metropolitan area, satisfied all five sections –Applecross Senior High School.

Additional categories explored were whether the policies included examples of what bullying is, what it involves, its different types, as well as what bullying is not - in their bullying definition. In Western Australia, 24 out of 65 (37%) public high schools included examples of what bullying is in addition to the bullying definition. Thirty out of 65 (46%) had mentioned a positive school environment and culture, such as a whole school approach against bullying. Twenty-five out of 65 (38%) mentioned providing support for the victims of bullying, as well as support for anyone else involved. Nine out of 65 (14%) of the policies mentioned providing counselling for the victim and others involved. Eight out of 65 (12%) mentioned providing mediation. Five out of 65 (8%) policies did not mention providing any form of support, counselling or mediation for the victim or any others involved. Three out of 65 (5%) mentioned providing all three. Thirteen out of 65 (20%) included procedures or a step by step process on how to report bullying, whom to report it to, or what students should do if bullying occurs. Twelve out of 65 (18%) mentioned consequences for bullying behaviour, such as suspension or expulsion. Two out of 65 (3%) of the policies had used the full national definition of bullying in their policy. Twenty five out of 65 (38%) included bullying prevention and education on bullying as part of the school curriculum, and or part of programs that are run by the school (e.g. through workshops, presentations, guest speakers). Twenty one out of 65 (32%) mentioned cyberbullying, whether it be as a category under the definition of bullying or as a separate issue to bullying (See Appendix 4).

South Australia

When conducting the research on high school bullying and cyberbullying policies in South Australia, the scope of the sample was identical to Western Australia. Since a majority of high schools in South Australia begin at year 8 (and not year 7) the sample selection for schools in South Australia was limited to high schools, allowing for the year level range to start at year 8. The high schools chosen in South Australia were limited to Adelaide's north and south metropolitan area. 52 public high schools that met the criteria.

As in Western Australia, the criteria used to explore high schools' anti-bullying policies in both states included five main sections:

- i. Whether the high schools publicly displayed an anti-bullying policy on their school website;
- ii. Whether the policy included a definition of bullying in their policy;
- iii. Whether they listed strategies for interventions, monitoring of the behaviours, or prevention approaches in their policy;
- iv. Whether they included the rights and responsibilities of staff, students and parents when dealing with bullying behaviours;
- v. Whether there was a separate definition for cyberbullying.

Findings show that 46 out of 52 (88%) high schools publicly displayed an anti-bullying on their school website. Out of the six schools that did not display an anti-bullying policy on their website, three schools had no policies displayed or available on their website at all, two linked the South Australian 'Bullying Prevention Strategy – a community approach' document, and one had policies related to other issues such as uniform, ICT and assessments, but did not have an anti-bullying policy – however, bullying intervention strategies and rights and responsibilities of students, staff and parents were found in their 'Safe School Policy'. Unlike the wide range of names for the anti-bullying policies in Western Australian high schools, a majority of the public high schools in South Australia had the same anti-bullying policy name with a slight difference in wording, such as 'Anti-bullying Policy', 'Bullying and Harassment Policy', 'Anti-bullying and Harassment Policy'.

Looking at all South Australian public high schools in the metropolitan area, it was also found that 46 out of the 52 (88%) high schools had a definition of bullying in their anti-bullying policy. Thirty out of 52 (58%) had listed strategies for interventions, monitoring or prevention of the bullying. These ranged from very simplistic dot point strategies on what the school will do, to detailed action plans, as well as post intervention strategies. Twenty eight out of 52 (54%) had listed the rights and responsibilities of students, staff, and parents in their anti-bullying policy. These are important as they set out what everyone's roles are when it comes to bullying and bullying incidences, as well as promoting anti-bullying culture. Twenty one out of 52 (40%) had mentioned cyberbullying as a separate issue and gave it a separate definition from bullying. Overall, 11 out of 52 (21%) of the public high school in South Australia's metropolitan area had included all five sections.

Additional categories explored were whether the policies included examples of what bullying is, what it involves, its different types, as well as what bullying is not - in their bullying definition. In South Australia, 38 out of 52 (73%) had included this in their policy. Another category looked at, was whether the policy had mentioned a positive school environment/culture/whole school approach to preventing bullying. In South Australia, 37 out of 52 (71%) of schools included this aspect in their policy.

The next category looked at whether the school policy had mentioned providing support to the victim and anyone involved in the bullying. Thirty three out of 52 (63%) of South Australian policies included this aspect. Like the previous category, the following category looked at whether the school will provide counselling for the victim, bystanders, and the bully. Thirty eight out of 52 (73%) of South Australian policies had included this support. The next category looked at whether the school policy had included mediation as an intervention strategy to resolve matters between the victim and bully. Ten out of 52 (19%) of the South Australian policies had included this. Three out of 52 (6%) of South Australian school policies had not mentioned support, counselling or mediation in their policy. Forty one out of 52 (79%) of the policies had mentioned procedures on how the school will deal with the bullying matter or a staged process on what the students should do if they witness bullying. Thirty eight out of 52 (73%) of the

policies had mentioned consequences for the bullying behaviour. Seven out of the 52 (13%) of the school bullying policies had used the national definition of bullying when defining bullying. Thirty one out of 52 (60%) of the policies had mentioned providing education and implementing bullying prevention programmes into the school curriculum, and 40 out of 52 (77%) had mentioned cyberbullying in their policy.

This last category is different to the cyberbullying category in the main five categories. This category includes all policies that mention cyberbullying behaviours. The former cyberbullying category only includes policies where cyberbullying and its definition is mentioned as a separate issue to bullying. As cyberbullying is often defined under bullying, it was important to have two categories that showed whether school policies made the distinction between bullying and cyberbullying. Cyberbullying itself is a major issue and having the two categories will show the number of schools that bring awareness to it in their policies (See Appendix 5).

4.2 Comparative Analysis identifying similarities and differences between West Australian and South Australian High School Bullying and Cyberbullying policies

The first research question seeks to determine whether Western Australian public high schools openly display policies pertaining to bullying and cyberbullying in comparison to South Australian public high schools.

Based on the data collected, it was found that 65 high schools in Western Australia and 52 high schools in South Australia fit this criteria. Further, data was collected to determine the number of schools from each state that had implemented the 16 categories in their school bullying and cyberbullying policy. These 16 categories were extracted from the literature review in Chapter 2 determining what would be an effective anti-bullying policy for schools require. For a list of these 16 categories see Appendix 3.

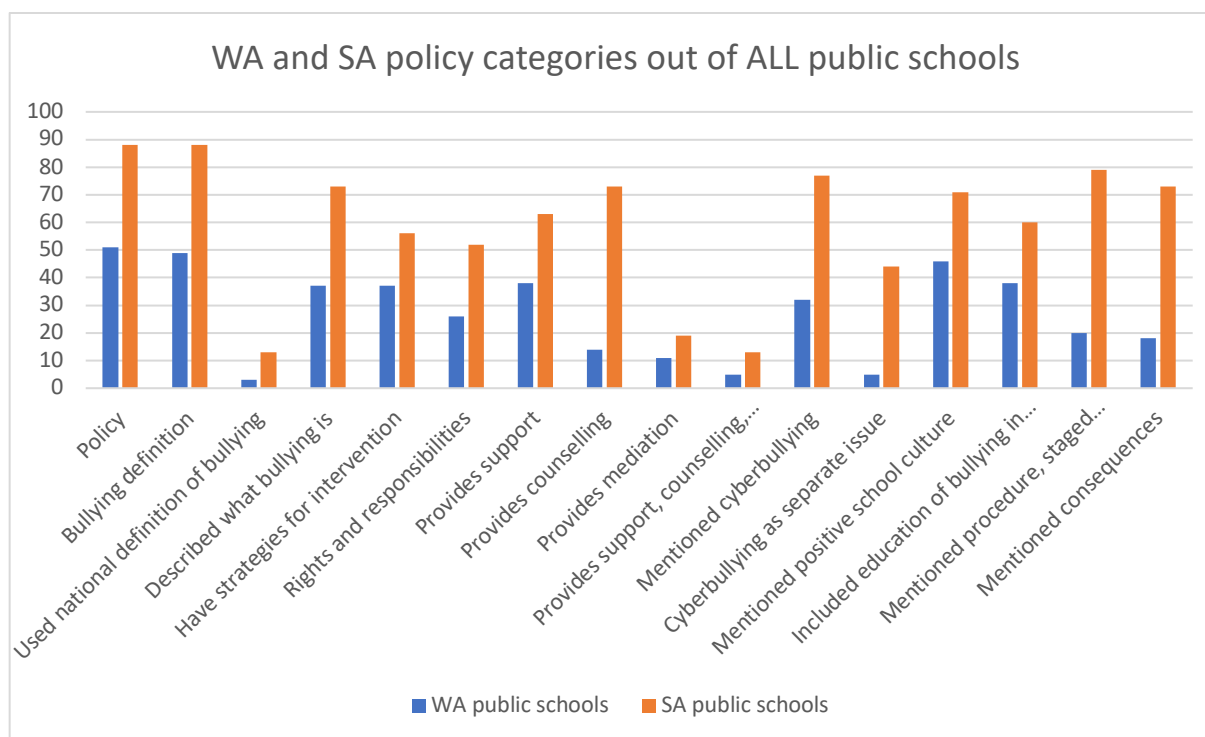
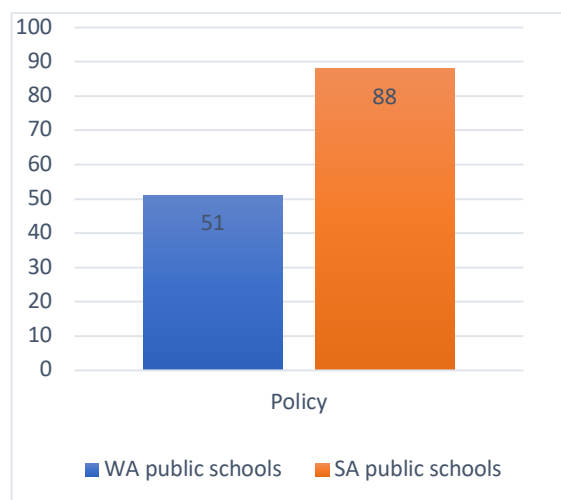


Figure 2 Categories comparison - WA and SA High Schools' Policies

From this bar graph, it is easily shown that more South Australian public schools included the categories listed in the graph in their policies when compared to Western Australian public schools.



	Policy Publicly Displayed	Sample	%
WA public schools	33	65	51%
SA public schools	46	52	88%

Figure 2.1 WA and SA Publicly Displayed Bullying Policies (% of sample)

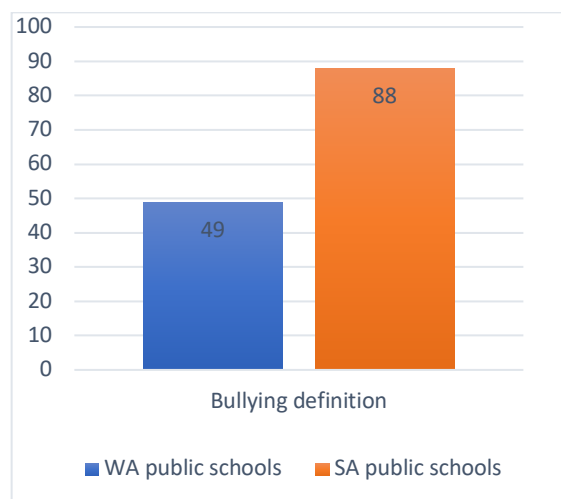
The first category in this graph represents the percentage of metropolitan public high schools in both Western Australia and South Australia that openly display a bullying or cyberbullying policy on their school website. This category includes any form of public policy that regards bullying behaviours such as anti-bullying, anti-harassment, bullying prevention, positive behaviour, or student code of conduct. In Western Australia, 51% of all metropolitan public high schools had included a bullying policy on their school website. This is compared to 88% of all South Australian public high schools that openly display a bullying policy on their school's website.

This difference could be a result of Western Australia lacking state legislation requiring its schools to implement a bullying or cyberbullying policy as a part of a school's policy. The Western Australian government through the Department of Education has a policy⁷²⁹ in which it is stated that principals are required to implement a behavioural policy (which includes bullying behaviours) in their school; however, because this policy is a minor regulatory instrument, it is not compulsory or mandatory for schools to follow or implement it. The same applies to the guidelines for schools titled 'Preventing and Managing Bullying'.⁷³⁰ In this document there are a list of strategies that were compiled to assist schools in preventing and managing bullying. This document also includes aspects that schools should include and consider when managing bullying in their school. The implementation of these guidelines is also not compulsory.

In contrast, the South Australian government had implemented a state wide community-based approach to bullying prevention by developing a five key action approach known as the Bullying Prevention Model. This strategy involves South Australian schools and the wider community working together to ensure that there is a consistent and coordinated response to bullying prevention across all organisations in the South Australian community. In South Australia, the *Children and Young People (Safety) Act 2017* requires prescribed organisations to provide a child safe environment. Section 114(1)(b) requires that certain organisations (schools included), have policies and procedures to ensure that a child safe environment is provided.

⁷²⁹ Government of Western Australia (n 445).

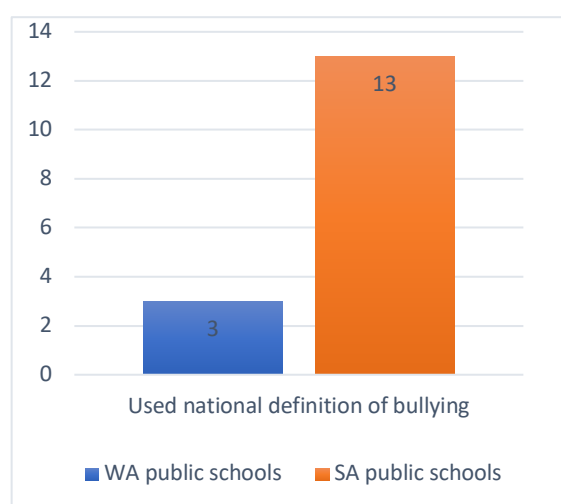
⁷³⁰ Government of Western Australia (n 451).



	Defined bullying	Sample	%
WA public schools	32	65	49%
SA public schools	46	52	88%

Figure 2.2 WA and SA Definition of Bullying (% of sample)

The second category represents the percentage of schools that had included a definition of bullying in their school's anti-bullying policy. In Western Australia, 49% of public schools had included a bullying definition in their school policy while 88% of public schools in South Australia had a bullying definition. Except for one school in Western Australia, all sample schools in both states that had their bullying policy publicly available included a definition of bullying.



	National definition of bullying	Sample	%
WA public schools	2	65	3%
SA public schools	7	52	13%

Figure 2.3 WA and SA National Definition of Bullying (% of sample)

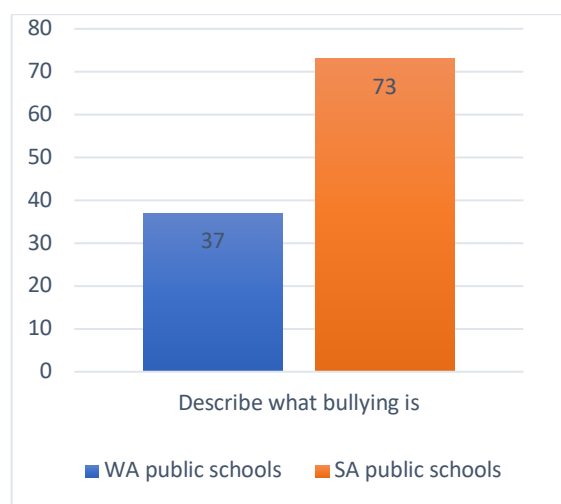
The third category represents the percentage of public schools that had used the national definition of bullying in their school bullying and cyberbullying policy. The national definition of bullying for Australian schools was developed as a part of the National Safe Schools Framework by the Safe and Supportive School Communities Working Group. This group encompasses all state, territory, and federal education departments, as well as the national Catholic and independent schooling representatives.

The national definition states that,

“Bullying is an ongoing and deliberate misuse of power in relationships through repeated verbal, physical and/or social behaviour that intends to cause physical, social and/or psychological harm. It can involve an individual or a group misusing their power, or perceived power, over one or more persons who feel unable to stop it from happening. Bullying can happen in person or online, via various digital platforms and devices and it can be obvious (overt) or hidden (covert). Bullying behaviour is repeated, or has the potential to be repeated, over time (for example, through sharing of digital records). Bullying of any form or for any reason can have immediate, medium and long-term effects on those involved, including bystanders. Single incidents and conflict or fights between equals, whether in person or online, are not defined as bullying”.⁷³¹

Unless the policies in both Western Australia and South Australia state the full national definition of bullying when defining bullying, they will not have satisfied this category. The results show that only 3% of Western Australian public high schools had used the national definition of bullying, compared to 13% of the South Australian public high schools.

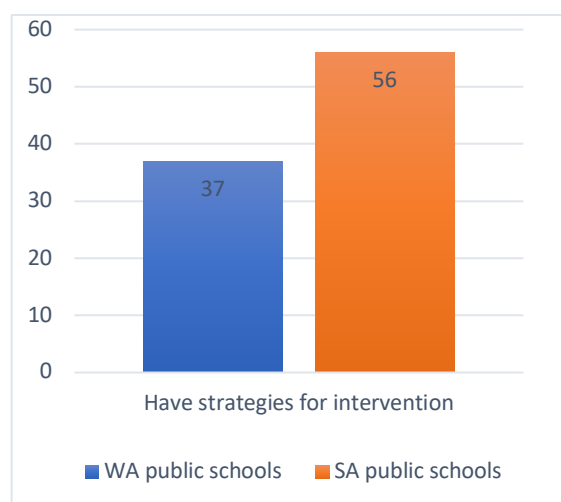
⁷³¹ Bullying. No Way! (n 28).



	Describe what bullying is etc	Sample	%
WA public schools	24	65	37%
SA public schools	38	52	73%

Figure 2.4 WA and SA Description of Bullying etc. (% of sample)

The fourth category represents the percentage of schools that had described what bullying is, what bullying is not, and the types of bullying in their bullying policy. This category was included to determine which of the policies had provided more context and information on what bullying is, in addition to the definition of bullying. This comes up as a subheading following the definition of bullying which may appear as ‘types of bullying’. Under this heading, the types of bullying may include physical, verbal, social, psychological, or cyber/online. Some policies leave these types as a list, whereas others provide a description of each type. Other policies list examples of what bullying is and what bullying behaviours will look like. For example: physical contact, spreading rumours, threatening someone, and sending/posting inappropriate content. While some policies list what bullying is not, such as single incidences of nastiness, random acts of aggression, or mutual disagreements. This was found to be rare, with only one South Australian school’s policy, and four Western Australian school policies, describing what bullying is not. The percentage of policies either describing what bullying is/is not and or describing the types of bullying, was 37% in Western Australian public schools policies and 73% in South Australian public schools. Based on these findings, it is suggested that South Australian schools put more effort into providing more information as to the different types of bullying.



	Strategies of intervention	Sample	%
WA public schools	24	65	37%
SA public schools	29	52	56%

Figure 2.5 WA and SA Strategies of Intervention (% of sample)

The fifth category represents the percentage of schools that included strategies of intervention in their policy. These strategies include whole school prevention strategies, preventative classroom strategies, playground strategies, monitoring and review processes, or early intervention strategies. One of the main differences between the Western Australian public school intervention policies compared to the South Australian public school intervention policies was the quality of the explanation of the intervention listed. The percentage of South Australian schools that include intervention strategies in their policies was 56% compared to 37% of all Western Australian public schools.

While many public school bullying policies regarding intervention strategies do not go into detail about what the specific strategy entails and only provide a simplified version of the strategy, some policies go into depth on each specific issue. When looking at the intervention strategies from both South Australian and Western Australian public school policies, a majority of these strategies were listed in dot points, for example: using the curriculum to teach students about respectful relationships, teaching positive bystander behaviour, counselling students who have been bullied, talking to parents and caregivers about the situation, ensure staff know how to address bullying effectively, and put consequences in place for those that bully. Most of the policies from both Western Australia and South Australia include a similar style in how they presented the strategies, as well as the types of strategies the schools included. While these strategies can be effective, there is no further explanation of how the school intends on

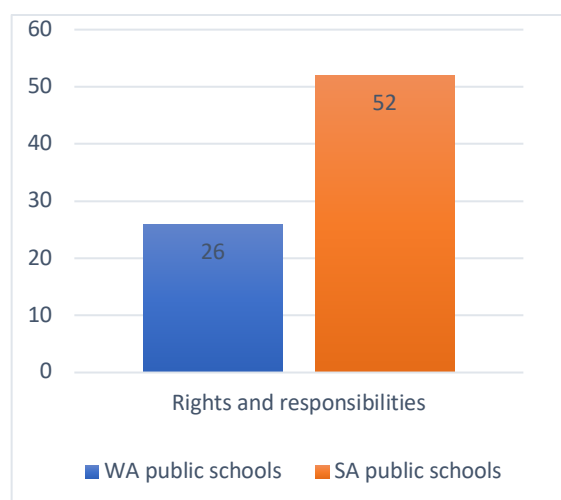
implementing the said strategy. It was very rare to see policies that included further information on how the school, staff, students or even the wider community will help address bullying in the school.

For example, while most policies state that their strategy for intervention includes education and implementing programmes into the curriculum to teach the students about bullying, it was found that only in very rare policies from both Western Australia and South Australian schools, did these policies further explain how the schools would do so.

In one South Australian school The Heights School,⁷³² their bullying policy included specific programs which will teach students about conflict resolution, ethical behaviour, resilience, rights, and responsibilities etc. This school's policy also includes whole school celebrations such as Harmony Day, Reconciliation Week, RUOK day and NAIDOC week. In another South Australian school Heathfield High School,⁷³³ their policy implemented the use of a Wellbeing Program to raise awareness concerning issues related to bullying. In their bullying policy, the school details the types of workshops and activities that will be conducted under the Wellbeing Program. The types of workshops that are run under this program cover topics such as: what bullying is, the effects of bullying, reasons why people bully, the resources available in the school, and the responsibilities of all school community members. Interestingly, this bullying policy included an explanation as to why the Wellbeing Program was included in their school's curriculum. The purpose of this Program was 'to raise awareness concerning the issues related to bullying, and to reduce the frequency and severity of bullying incidents within the school community'. Another strategy that was used in a few South Australian and Western Australian school bullying policies is the buddy system/peer mentoring programs, where Year 11 and 12 students help and support Year 7 students with their transition into high school. This aids the Year 7 students as they are provided with a support network by the older students.

⁷³² The Heights School (SA) <<https://www.theheights.sa.edu.au/wp-content/uploads/2020/11/bullyingpolicy-2020-update.pdf>>.

⁷³³ Heathfield High School (SA) <https://heathfieldhs.schoolzineplus.com/_file/media/13/antibullyingandharassmentpolicy.pdf>.



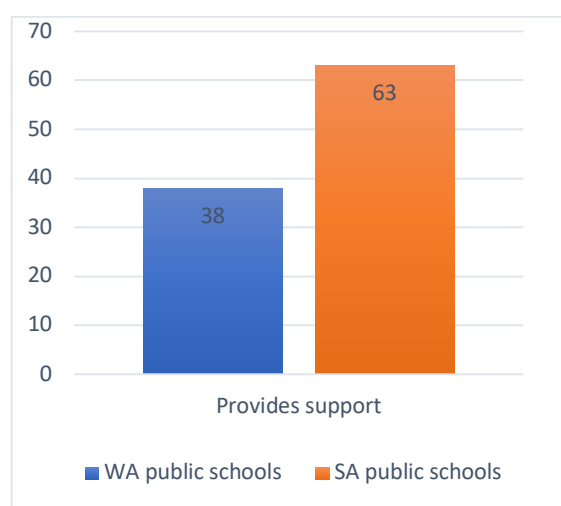
	Rights and responsibilities	Sample	%
WA public schools	17	65	26%
SA public schools	27	52	52%

Figure 2.6 WA and SA Rights and Responsibilities (% of sample)

The sixth category represents the percentage of schools that included a list of rights and responsibilities in their school bullying policy. Under this category, the policy must include the rights and responsibilities of the staff, students, and parents/caregivers. This category is important as it sets out the roles that each party plays in response to bullying. A good example was found in Applecross Senior High School⁷³⁴ in Western Australia. In its bullying policy, the school had set out a table listing the separate rights and responsibilities of the principal, staff, students, parents, and the wider community (including other professionals), as well as a section that includes the rights and responsibilities for all members altogether. For example, the policy states that all students, teachers, parents, and the wider school community have the right to be safe and supported in the school environment, to be included and to be treated with respect. They also have the responsibility to participate and contribute to school positive behaviour programs, build positive relationships, and demonstrate respect and tolerance towards others. This policy then goes into the specific rights and responsibilities of each member. Interestingly, the rights of the students include the right to be informed of the school's plan on bullying, the right to be provided with support that will help stop bullying, and the right to be aware of how to access support. These rights are very important and should be included in every bullying policy, not only for the students who are being bullied but for bystanders as well. Students may be reluctant to report bullying behaviours if they are unaware of the resources that are available to them at the

⁷³⁴ Applecross Senior High School (WA) <<https://applecross.wa.edu.au/wp-content/uploads/2020/11/Bullying-Policy.pdf>>.

school. The rights and responsibilities of the staff are equally important. The staff has the right to have access to professional learning on how to effectively manage and prevent bullying, and access to the curriculum for resources on how to support students. They also have the responsibility to promote positive relationships, identify and respond to bullying, teach students how to respond to bullying, as well as the responsibility to promote effective bystander behaviour. In Western Australia, 26% of the bullying policies included a list of rights and responsibilities, compared to 52% of South Australian bullying policies.



	Provides support	Sample	%
WA public schools	25	65	38%
SA public schools	33	52	63%

Figure 2.7 WA and SA Provides Support (% of sample)

The seventh category represents the percentage of public high schools' policies that offer support to students if they are victims of bullying or have witnessed bullying. Support is commonly offered as a form of aid in many public school policies, but the type of support that the school offers is not made clear. Support can include help such as mediation, talking to a counsellor, mentor, school leader or staff member. Some examples of schools providing support in their school bullying policy include wording such as: 'both the bully and the victim are offered counselling and support' seen in Modbury High School.⁷³⁵ Other school bullying policies state that the support that is offered to the students is to 'assist with bullying issues, and the steps

⁷³⁵ Modbury High School (SA) <<https://www.modburyhs.sa.edu.au/our-school/policies>>.

involved in reporting and dealing with harassment issues’ seen in Brighton Secondary School.⁷³⁶ All schools should provide this type of support for students who have been bullied, as well as the bystanders and bullies. In South Australia, 63% of public schools state that they provide support for students in their bullying policy, compared to 38% of public schools in Western Australian bullying policies.

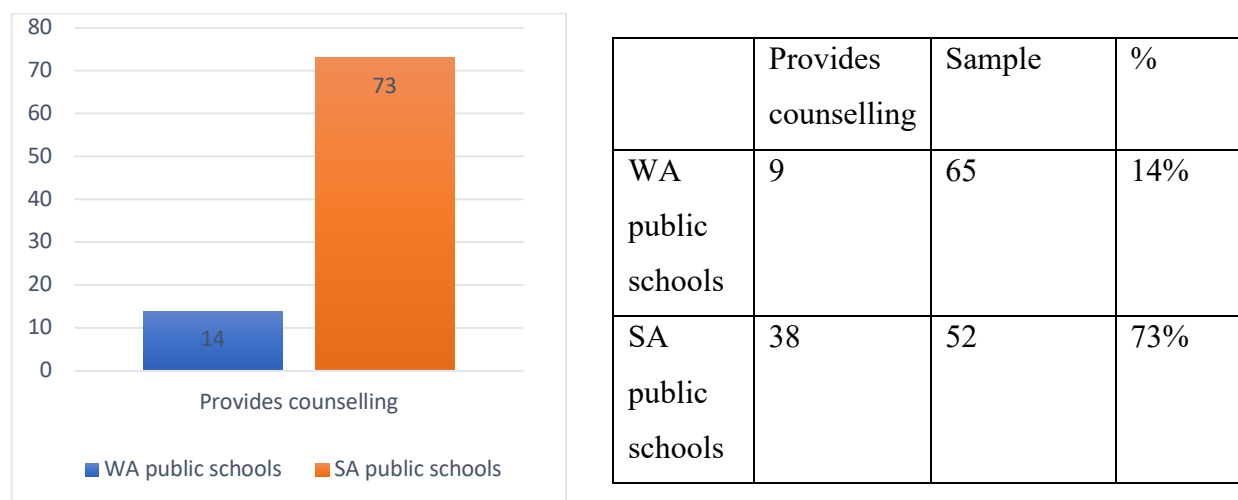
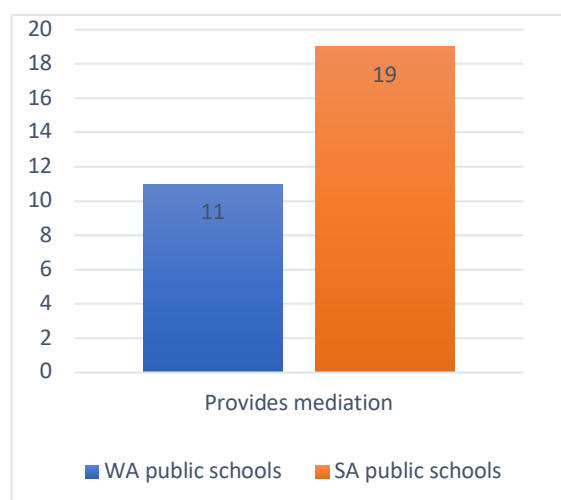


Figure 2.8 WA and SA Providing Counselling (% of sample)

The eighth category represents the percentage of public schools that provide counselling services to victims of bullying in their school bullying policy. In South Australia, 73% of the bullying policies had mentioned providing counselling services compared to 14% of Western Australian bullying policies. In these policies, counselling can be referred to as support given by a counsellor, or as a service provided to students who have experienced bullying. Additional information on the details of the counselling service is not necessary to be explained in the policy. However, schools must have this service provided for students who need extra support. The South Australian bullying policies have a drastically higher percentage of schools that provide counselling, compared to the Western Australian policies.

⁷³⁶ Brighton Secondary School (SA) <<https://www.brightonss.sa.edu.au/wp-content/uploads/2018/05/BSS-Anti-Bullying-Anti-Harassment-Policy-2018-.pdf>>.



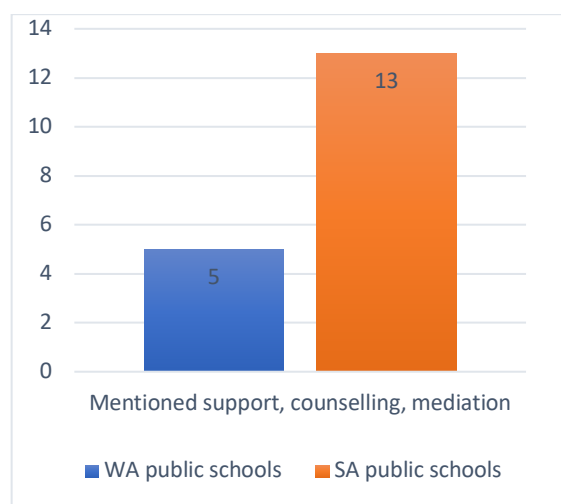
	Provides mediation	Sample	%
WA public schools	7	65	11%
SA public schools	10	52	19%

Figure 2.9 WA and SA Provides Mediation (% of sample)

The ninth category represents the percentage of school policies that provide mediation as a form of conflict resolution between the victim and the bully. This form of conflict resolution is not very common in both Western Australian and South Australian school policies with only 11% of the sample public school policies in Western Australia implementing it and 19% of all South Australian sample policies doing the same. In the bullying policies, it is not explained how mediation will be conducted. For example, in South Australia's Craigmore High Schools' bullying policy,⁷³⁷ mediation was listed alongside other interventions and support such as restorative practices and parent meetings, which are provided to the students by the school. Whereas in Western Australia's Kelmscott Senior High School's policy,⁷³⁸ mediation was listed alongside problem solving and conflict resolution strategies, and counselling and discussions with parents and teachers. It is up to each individual school to decide how to mediate the situation, however, mediation is not a popular form of conflict resolution in school bullying policies in both Western Australia and South Australia.

⁷³⁷ Craigmore High Schools (SA) <<https://craigmorehs.sa.edu.au/documents/policies/>>.

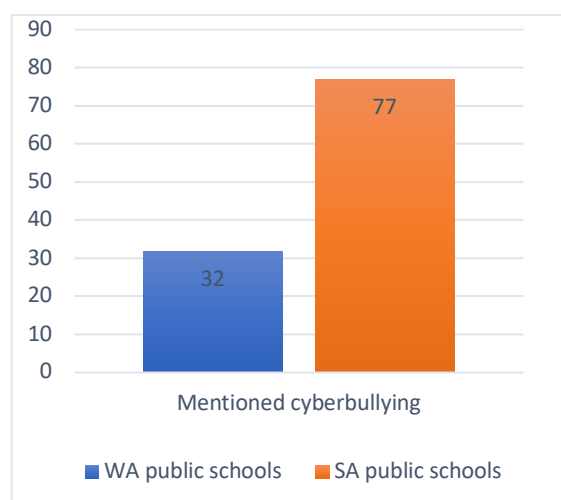
⁷³⁸ Kelmscott Senior High School (WA) <<https://www.kshs.wa.edu.au/wp-content/uploads/2020/06/Bullying-Harrassment-Policy.pdf>>.



	Mentions support, counselling, mediation	Sample	%
WA public schools	3	65	5%
SA public schools	7	52	13%

Figure 2.10 WA and SA Support, Counselling, and Mediation (% of sample)

The tenth category represents the percentage of public high school policies that include support, counselling, and mediation in their bullying policy. Only 5% of sample schools in Western Australia had included all three strategies in their bullying policies, compared to 13% of sample public high schools in South Australia. While there is a higher number of schools that only implement one of the three or even two of the three strategies, it is rare to see school bullying policies that had implemented all three strategies. There was a total of 3 out of 65 public schools in Western Australia that implemented all three in their bullying policies, and a total of 7 out of 52 public schools in South Australia.



	Mentions cyberbullying	Sample	%
WA public schools	21	65	32%
SA public schools	40	52	77%

Figure 2.11 WA and SA Inclusion of Cyberbullying (% of sample)

The eleventh category represents the percentage of public high school policies that mention cyberbullying in their school bullying policy. In this category, any policy that includes cyberbullying as a form of bullying, as a separate issue to bullying, or describes what cyberbullying is, is included. 77% of South Australian bullying policies had mentioned cyberbullying at least once, compared to 32% of the bullying policies in Western Australia. One way in which cyberbullying is mentioned in a bullying policy is by describing cyberbullying as an example of bullying behaviour. For example, in South Australia's Blackwood High School,⁷³⁹ cyberbullying is described as the 'use of information or communication technologies to engage maliciously with others. It has many similarities with offline bullying, but it differs in that the student(s) who is/are bullying can be anonymous, it can reach a wide audience and the sent or uploaded material can be difficult to remove'. In Mount Barker High School,⁷⁴⁰ the policy lists cyberbullying as a way in which bullying can happen, i.e., through 'using email, voice and text messaging, photographic, social media and video games'. The bullying policies in Western Australia's schools provide similar definitions.

⁷³⁹ Blackwood High School (SA) <<https://www.bhs.sa.edu.au/wp-content/uploads/2022/07/Under-Review-V2-2020-Harassment-and-Bullying-Policy.pdf>>.

⁷⁴⁰ Mount Barker High School (SA) <https://www.mtbhs.sa.edu.au/about/policies_and_documents>.

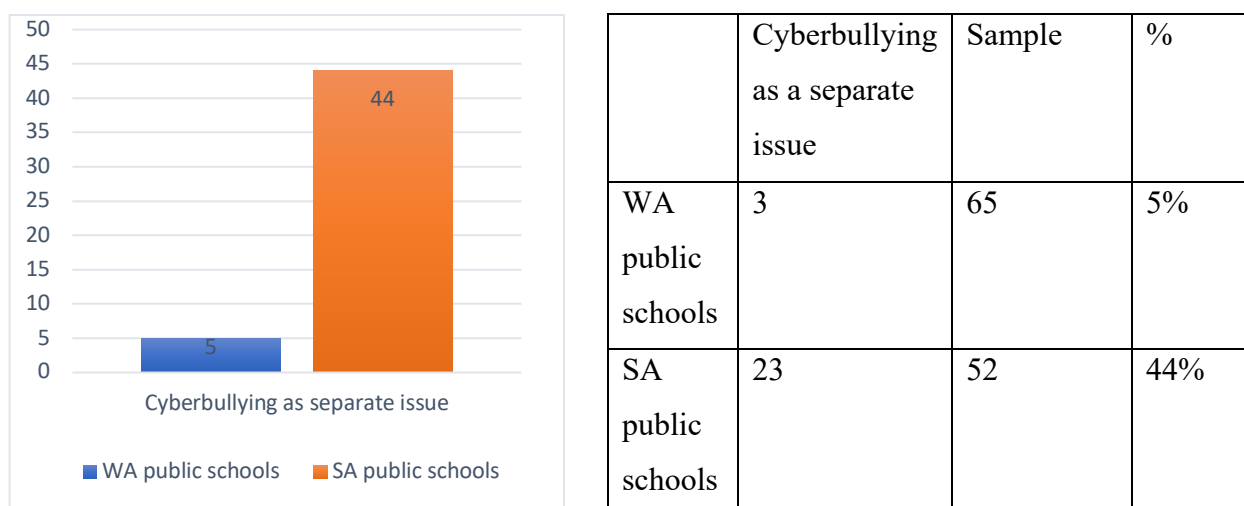


Figure 2.12 WA and SA Cyberbullying as a Separate Issue to Bullying (% of sample)

The twelfth category represents the percentage of public high school policies that include cyberbullying as a separate issue to bullying. This is similar to the previous category which included any policy that mentions cyberbullying, however, this category only includes the bullying policies that talk about cyberbullying as a separate matter to bullying. While cyberbullying is a form of bullying and is classed under the umbrella term of bullying, the literature on cyberbullying as described in Chapter 2, suggests that cyberbullying is different when compared to traditional bullying. This category aims to show which bullying policies make the distinction between the two forms of bullying.

The findings show that 3 out of 65 Western Australian school bullying policies had defined cyberbullying as a separate issue, making that 5% of the policies. This is in comparison to 23 out of 52 South Australian school bullying policies, 44% of their total policies. While the number of South Australian school policies containing cyberbullying as a separate issue was quite low at 44%, it is still significantly higher than Western Australian school bullying policies. This also demonstrates that some South Australian schools take cyberbullying as a serious issue, and therefore had the need to give cyberbullying its own section that is separate to bullying, in the policy. By disconnecting cyberbullying from bullying, and by giving cyberbullying its own definition and list of types of cyberbullying behaviours, it shows the importance and severity of cyberbullying. By listing cyberbullying as a type of bullying or as a form of bullying behaviour, it does not give the impression that cyberbullying is as detrimental as traditional bullying, when

according to literature, as discussed in Chapter 2, cyberbullying can have longer lasting effects on its victims when compared to traditional bullying.

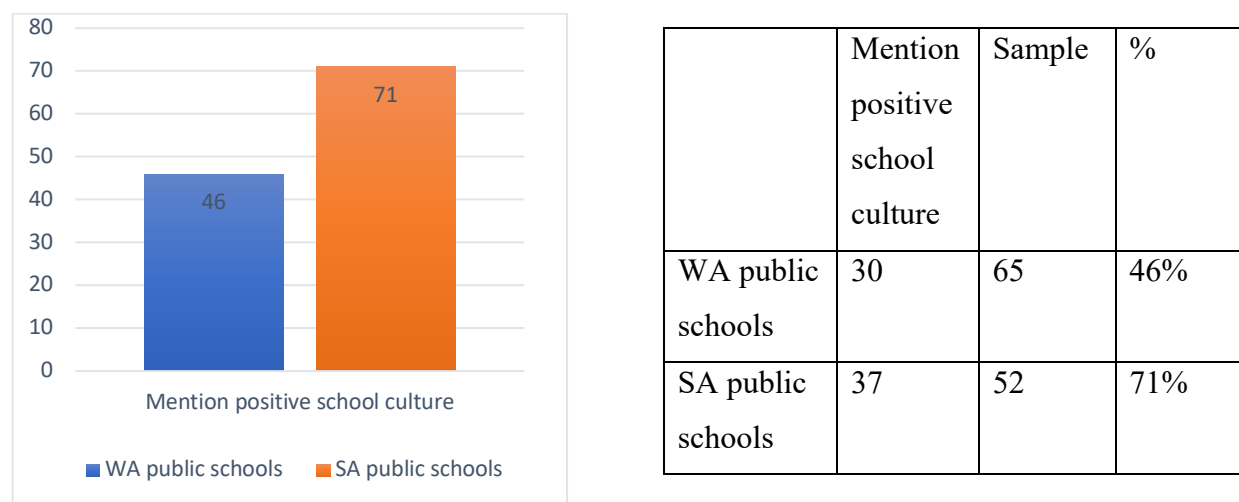


Figure 2.13 WA and SA Mention Positive School Culture (% of sample)

The thirteenth category represents the percentage of public high school policies that include a statement on positive school culture at the beginning of their bullying policy. This category also includes wording that focuses on a whole school approach to bullying, promoting a positive school environment, inclusivity, and a supportive and safe environment. For example, in South Australia’s Christies Beach High School,⁷⁴¹ the policy states that ‘staff commit to ensuring a safe and supportive environment free from bullying’.

Another common statement used in a few bullying policies in South Australian schools is that the school ‘fosters a positive culture where bullying is not accepted’ and that everyone ‘has the right to feel safe in their school environment’. While these statements are mostly used in the school’s bullying policy which shows a positive school environment, there are different statements that a few other schools use that also promote a positive school culture. For example, some schools add that they will ‘promote connectedness and fairness’, as seen in Eastern Fleurieu R-12 School,⁷⁴² while other schools state that they embrace diversity by seeking to

⁷⁴¹ Christies Beach High School (SA) <<https://www.cbhs.sa.edu.au/wp-content/uploads/2019/10/CBHS-Anti-Bullying-and-Harassment-Policy.pdf>>.

⁷⁴² Eastern Fleurieu R-12 School (SA) <<https://easternfleurieu.sa.edu.au/policies>>.

‘educate its community to tolerate, accept, embrace and learn from people of different genders and different ethnic and cultural backgrounds’, as seen in Le Fevre High School.⁷⁴³

In rare cases, some school policies state that they will ‘work with the school community and other services and agencies to support the students in being responsible and productive members of the community’, as seen in Golden Grove High School⁷⁴⁴ and Hamilton Secondary College.⁷⁴⁵ These examples have been taken from South Australian school bullying policies. Western Australian school bullying policies statements on positive school culture do not look the same. For example, in Byford Secondary College,⁷⁴⁶ the school policy seeks to ‘promote the development of the values that create and maintain inclusive, safe and supportive education environments’. Many of the Western Australian school bullying policies had included statements that use similar wording to promote positive school culture at their school, such as ‘providing a positive, safe and inclusive environment’ and ‘encourage staff and students to foster positive relationships within the school community’, as seen in Canning Vale College,⁷⁴⁷ and ‘providing a safe, caring environment for all students, staff and parents’, as seen in Carine Senior High School.⁷⁴⁸ However, one school (Kelmscott Senior High School),⁷⁴⁹ had encouraged a whole school approach when dealing with bullying, stating that ‘everyone will be involved in preventing violence, harassment and bullying, including parents, teachers and students’. Overall, South Australia still had 77% of the policies including wording on a positive school culture, compared to Western Australia with 41%.

⁷⁴³ Le Fevre High School (SA) <<https://www.lefevrehs.sa.edu.au/wp-content/uploads/2019/05/Anti-Harassment-and-Anti-Bullying-Policy.pdf>>.

⁷⁴⁴ Golden Grove High School (SA) <https://www.goldengrovehs.sa.edu.au/images/PDFS/Bullying_and_Harassment_Policy.pdf>.

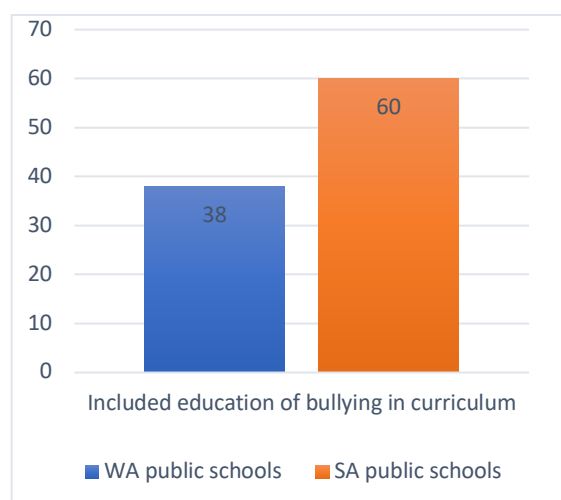
⁷⁴⁵ Hamilton Secondary College (SA) <<https://www.hamcoll.sa.edu.au/wp-content/uploads/Bullying-and-Harassment-Policy-2017-WEB.pdf>>.

⁷⁴⁶ Byford Secondary College (WA) <<https://byfordsc.wa.edu.au/wp-content/uploads/2019/05/2017-Preventing-and-Managing-Bullying-Byford-Secondary-College-Guidelines.pdf>>.

⁷⁴⁷ Canning Vale College (WA) <<https://cvc.wa.edu.au/wp-content/uploads/2021/02/Canning-Vale-College-PPR-Bullying-Guidelines.pdf>>.

⁷⁴⁸ Carine Senior High School (WA) <<https://www.carinehs.wa.edu.au/wp-content/uploads/2020/07/Anti-Bullying-Policy-2015.pdf>>.

⁷⁴⁹ Kelmscott Senior High School (WA) <<https://www.kshs.wa.edu.au/wp-content/uploads/2020/06/Bullying-Harassment-Policy.pdf>>.



	Education on bullying in curriculum	Sample	%
WA public schools	25	65	38%
SA public schools	31	52	60%

Figure 2.14 WA and SA Providing Education on Bullying (% of sample)

The fourteenth category represents the percentage of public high school policies that include education on bullying in their school curriculum. This education can vary from workshops created by the school, inviting guest speakers, presentations, assemblies, programs that the students must take, or implemented into the curriculum to be taught in classes. Education and the implementation of it in the school curriculum are closely linked to prevention strategies. As mentioned above in category five on strategies and interventions, education on bullying can also vary from programs that explain to students what bullying is, the effects of bullying and the reasons why people bully, as seen in Heathfield High School's bullying policy,⁷⁵⁰ to programs that teach students how to build respectful relationships with others, how to recognise bullying, what to do if you witness bullying, as well as how to get help, as seen in Craigmore High School's bullying policy.⁷⁵¹

South Australia's Eastern Fleurieu R-12 School's bullying policy⁷⁵² includes three forms of education in its prevention strategies section: the Pastoral Care programs, developing resilience skills, and teaching. In the Pastoral Care Programs, each year level will develop an understanding of issues for bullies, victims, and bystanders, learn strategies to eliminate bullying,

⁷⁵⁰ Heathfield High School (SA)

<https://heathfieldhs.schoolzineplus.com/_file/media/13/antibullyingandharassmentpolicy.pdf>.

⁷⁵¹ Craigmore High School (SA) <<https://craigmorehs.sa.edu.au/documents/policies/>>.

⁷⁵² Eastern Fleurieu R-12 School (SA) <<https://easternfleurieu.sa.edu.au/policies>>.

the consequences of bullying, and student responsibilities. In the development of resilience skills section, they focus on social skills, positive thinking skills, resourcefulness, healthy self-esteem and emotional literacy. In the last section on teaching, the school teach students about violence prevention, conflict resolution, anger management, problem solving, and teaching diversity. Some schools also provide education on cyberbullying and online safety issues, however, it is not as common when compared to education on traditional bullying.

Cyberbullying and online safety issues are not commonly mentioned as topics for workshops or education programs that schools choose to implement when teaching students about bullying. It was interesting to note that some schools place the responsibility of teaching the students about cyberbullying and safety, on the parents and families. For example, in South Australia's Underdale High School's bullying policy,⁷⁵³ it is stated that parents and families should 'talk to their children about safety issues. This includes bullying and cyberbullying. Help them understand what it is, why it is harmful and how to respond'. In Woodville High School's policy⁷⁵⁴ it is stated that the school's curriculum strategies 'explicitly address protective factors and behaviours relating to the safe use of technology, cyberbullying and e-crime'. Cyberbullying is first introduced and addressed in the Year 9 curriculum, and in Year 10 there is a refresh seminar and continued awareness of cyberbullying. In Western Australian schools, most of the policies mention education in the curriculum under the rights and responsibilities of the staff, whereas in South Australia, they are mostly found under the strategies and intervention section of the policy. In many Western Australian policies, they list the same thing. For example, in Applecross Senior High School,⁷⁵⁵ Atwell College,⁷⁵⁶ Butler College,⁷⁵⁷ and Byford Secondary College,⁷⁵⁸ staff have the right to access curriculum resources that are suitable for supporting students in building positive relationships, resiliency, safety and bullying prevention, which also

⁷⁵³ Underdale High School (SA) <<https://www.underdale.sa.edu.au/wp-content/uploads/2021/06/UHS-Bullying-Prevention-Policy.pdf>>.

⁷⁵⁴ Woodville High School (SA) <https://woodvillehigh.sa.edu.au/uploads/6/8/6/3/6863387/countering_bullying_and_harassment_2020.pdf>.

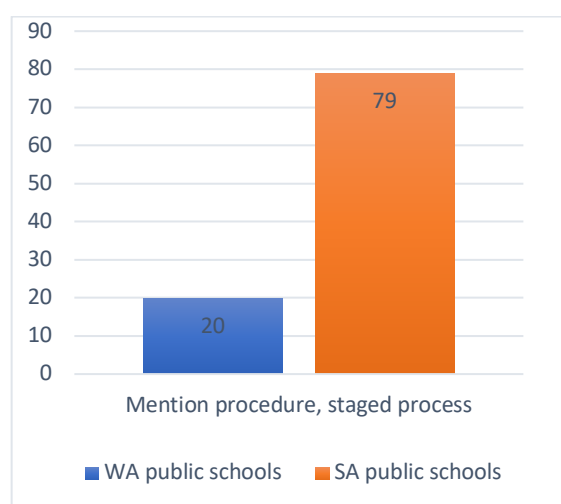
⁷⁵⁵ Applecross Senior High School (WA) <<https://applecross.wa.edu.au/wp-content/uploads/2020/11/Bullying-Policy.pdf>>.

⁷⁵⁶ Atwell College (WA) <<https://www.atwellcollege.wa.edu.au/view/policies/bullying-policy>>.

⁷⁵⁷ Butler College (WA) <https://butlerc.schoolzineplus.com/_file/media/946/2022_positive_behaviour_support_plan.pdf>.

⁷⁵⁸ Byford Secondary College (WA) <<https://byfordsc.wa.edu.au/wp-content/uploads/2019/05/2017-Preventing-and-Managing-Bullying-Byford-Secondary-College-Guidelines.pdf>>.

include social and emotional learning. In Western Australia, 38% of the school policies included education on bullying to be part of the school curriculum, compared to 60% of the school policies in South Australia. It is important to note that schools provide education on issues surrounding bullying as well as teaching them resilience skills. These are important as they act as a preventative measure for bullying instead of a reactive measure to bullying. Students should be aware of how to protect themselves or spot early warning signs of bullying before the bullying continues or leads to something more dangerous.



	Mentions procedure, staged process	Sample	%
WA public schools	13	65	20%
SA public schools	41	52	79%

Figure 2.15 WA and SA Mention Procedures, Staged Process (% of sample)

The fifteenth category represents the percentage of public high school policies that include a reporting process, procedure, and staged process for students on what to do when bullying occurs. 79% of school policies in South Australia include a reporting process, whereas only 20% of Western Australian policies include them. It is important for school policies to include a reporting/staged process or procedure that detail what the students should do in case bullying occurs, as well as what the school will do once the bullying has been reported. As one of the reasons why students fail to report is because they do not believe the school will do anything about it, having a procedure or staged process listed in the school bullying policy may help to promote reporting, especially if students can see the process the school has to follow. Some school policies list the reporting process through step by step instructions in dot point form, while others show the process through flowcharts. Flowcharts make it easy to see the order that

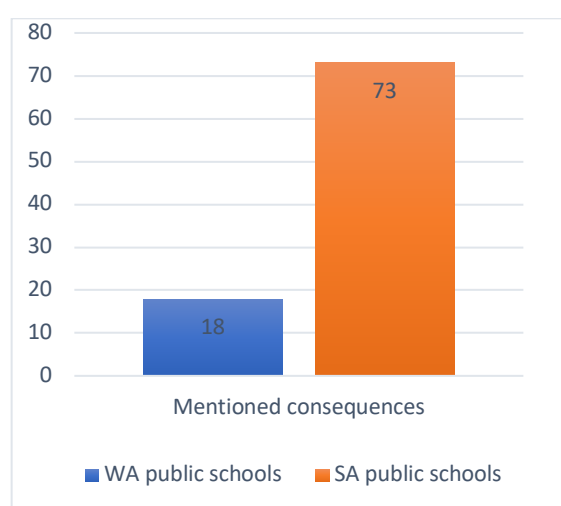
each action will follow as well as the potential outcome for each action. In South Australia's Brighton Secondary School,⁷⁵⁹ the flowchart follows the events of what will happen if the bullying is reported versus when it is not reported. According to this flowchart, when bullying is not reported, the bullying may continue. However, when it is reported, the next step will be intervention, which includes engaging in parent support, consulting the student team leader, or talking to the school counsellor. This stage then separates into talking to the bully, and the victim. The next stage is the negotiated behaviour change and review. If the bullying continues, the bully will be given a consequence, but if the bully shows a change in behaviour, the school will congratulate and celebrate, but will also continue to monitor the situation. Golden Grove High School⁷⁶⁰ in South Australia also use the flowchart method, however instead of reporting versus not reporting, the flowchart follows an informal versus formal process. The flowchart starts with the student reporting the bullying to the bully box, any teacher, home group teacher, school leader or manager, or wellbeing leader. After reporting the incident, the matter can be dealt with through the informal process, where parents may be informed, counselling may occur, or conflict resolution or restorative chat may take place. After these options have been used, the issue is resolved. However, if the matter follows the formal process, the process will involve the school leader. Under the formal process, parents will be contacted via phone, email or letter, an official warning is administered, and an appropriate consequence is given. The issue should be resolved after this point but if the bullying continues, the issue will be referred to executive leadership. Under this process, parents will be contacted again, the bully will receive a suspension, and there will also be a contract made between the students. If the issue is not resolved after this process, the bully can receive a further suspension, possible exclusion, and offered support from the Department for Education's Behaviour Team. This flowchart also provides a note that states that some forms of behaviour can constitute a criminal offence, and if this behaviour occurs, the police may be involved.

When compared to Western Australian policies that included this category, while some school policies include a flowchart, a handful of schools provide a dot point list on what students should

⁷⁵⁹ Brighton Secondary School (SA) <<https://www.brightonss.sa.edu.au/wp-content/uploads/2018/05/BSS-Anti-Bullying-Anti-Harassment-Policy-2018-.pdf>>.

⁷⁶⁰ Golden Grove High School (SA) <https://www.goldengrovehs.sa.edu.au/images/PDFS/Bullying_and_Harassment_Policy.pdf>.

do when bullying occurs. For example, in Lesmurdie Senior High School,⁷⁶¹ the school's policy advises the students to 'tell the bully to stop or firmly ignore their behaviour and walk away', to remain calm so as not to encourage further bullying behaviour from the bully, to use humour, avoid high risk areas, and to share your feelings with family and friends. Towards the bottom of the list, the school suggest discussing the concerns with the teacher, school psychologist or student support personnel. School policies in Western Australia tend to list advice on what to do if bullying occurs (ignoring the bully, walking away, remaining calm, or talking about it to peers or the teacher), whereas South Australian policies, tend to show the process of what will happen after bullying is reported (mediation and counselling for both parties, getting parents involved, monitoring). This can suggest that according to the policies, schools in South Australia take bullying matters more seriously.



	Mentioned consequences	Sample	%
WA public schools	12	65	18%
SA public schools	38	52	73%

Figure 2.16 WA and SA Mentioned Consequences (% of sample)

The last category represents the percentage of public high school policies that include consequences in their school policy with regards to bullying behaviours. These consequences include suspension or expulsion. In South Australian schools, 73% of the bullying policies mention the possible consequence of suspension or expulsion of the student if their bullying behaviour does not stop. This is compared to 18% of the school bullying policies in Western Australia. In a few policies in South Australia, when talking about the consequences of bullying

⁷⁶¹ Lesmurdie Senior High School (WA) <<https://www.lesmurdie.wa.edu.au/wp-content/uploads/2021/11/Positive-Behaviour-Management-2022.pdf>>.

behaviour, the school refer to the Regulations under the *Education Act* which allows the Principal, Deputy Principal or Assistant Principal to suspend or exclude students from attending the school if they ‘act in a manner that threatens the safety or wellbeing of a student or member of staff or other person associated with the school’ (including by sexually harassing, racially vilifying, verbally abusing or bullying that person). In both Western Australia and South Australian bullying policies, the end goal to stop the bullying behaviour is not suspension or expulsion. They are listed as the last possible option if the bullying behaviour does not stop. The policies instead focus more on prevention strategies, intervention strategies and mediation, counselling, and support, working on changing the behaviour, instead of taking the student out of the school.

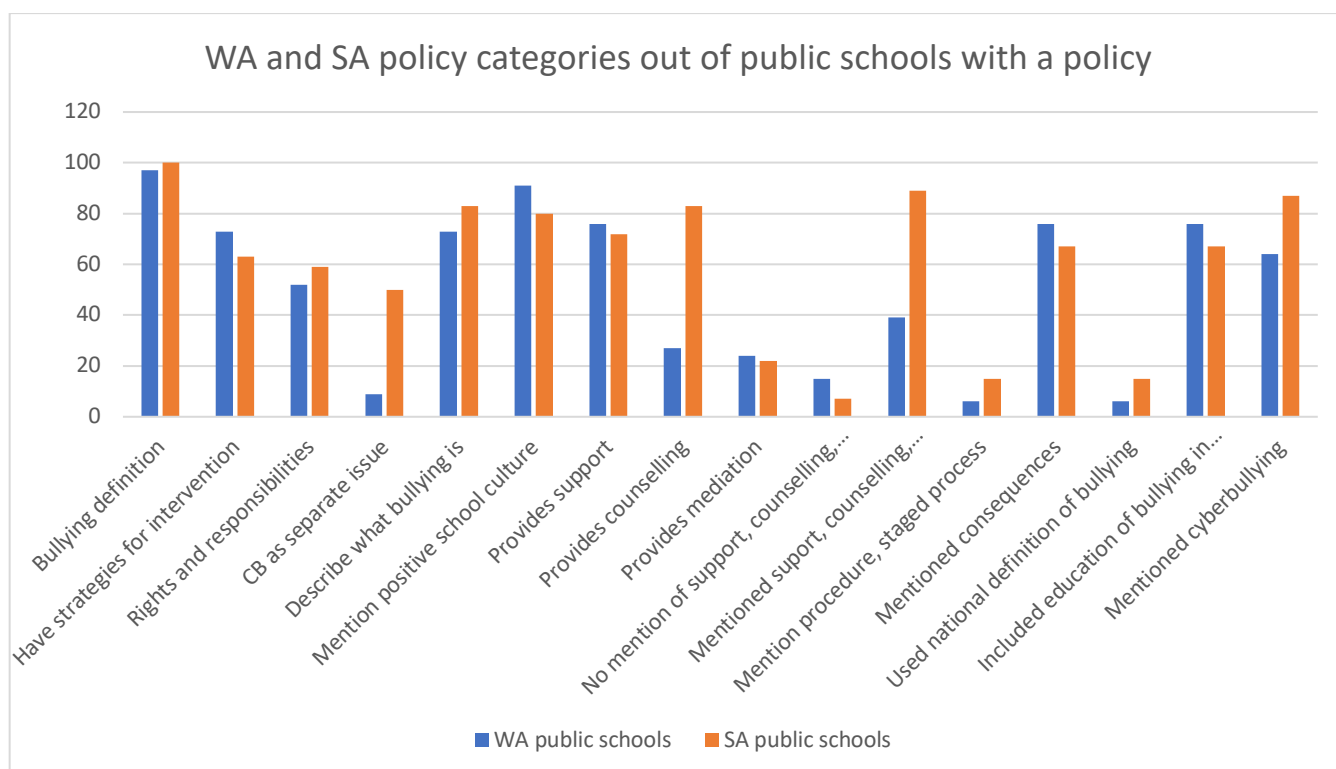


Figure 3 WA and SA Comparing Policy Categories for Schools with Publicly Available Policies

Figure 3 represents the percentage of each category from high schools in Western Australia and South Australia which have policies publicly available on their website. Figure 2 is a comparison of the states as a whole. When comparing Figure 3 to Figure 2, it shows that a majority of Western Australian schools are lacking in policies, but that the Western Australian schools that

do provide a bullying policy on their website, can be shown to be on a similar level to the schools with policies in South Australia. The schools in Western Australia that do not openly display their policies, impact the results in Figure 2. This also suggests that there is a need for compulsion stronger than what is currently asked by the Department of Education in Western Australia. The 49% of Western Australian schools that do not openly display a bullying policy, need to be made to do so by state legislation like in South Australia. Schools need to protect their students from harm, not only from a duty of care perspective, but also from a child safety perspective (See Appendix 8).

4.3 Analysis and Conclusion: Do Western Australian public high schools openly display policies pertaining to bullying and cyberbullying in comparison to South Australian high schools

While the public schools of both Western Australia and South Australia are mandated to implement a bullying policy in their schools, Western Australia by the Department of Education and South Australia through the *Children and Young People (Safety) Act 2017*, there is a clear difference between the two states. While there is compulsion by the *Children and Young People (Safety) Act 2017* to implement a policy in order to provide a safe environment for children, only 88% of the South Australian public high schools did so. When compared to the compulsion by the Department of Education in Western Australia for public schools to implement the same type of policy to protect children, the results have shown a vast difference in policy implementation with only 51% of all Western Australia public high schools making their policy publicly available.

Figure 2 clearly shows that while some Western Australian public schools do openly display policies pertaining to bullying and cyberbullying, the percentage when compared to South Australia demonstrates that Western Australian public high schools do not openly display their bullying and cyberbullying policies to the same standard as South Australia. This also applies to the standard at which South Australia seeks to offer support to students after the bullying has occurred. This points to a need for Western Australia to implement legislation that brings about

compulsion for its high schools to put in place and then openly display their anti-bullying and anti-cyberbullying policies, like in South Australia.

When analysing the intervention strategies in the South Australian public high school policies, the main themes that were most prominent in this state were: the promotion of an inclusive school culture and positive behaviour practices, education programmes based on bullying and how to respond to bullying implemented into the school curriculum, and the need for training of staff for them to be able to properly handle bullying situations. These elements form preventative type action. While the Western Australian bullying policies promote these issues as well, South Australian policies go more into depth with the amount and quality of content they put in their bullying policies. The South Australian bullying policies tend to be more substantial in their description of the intervention strategies, the programs they implement in order to tackle bullying, as well as the support they offer.

School policies that promote a culture of respect and a positive relationship between the school, students and staff can form an environment and culture within the school where bullying is understood as unacceptable behaviour, which can reduce the occurrence of bullying. While bullying cannot be prevented in all schools, schools and their policies must reflect and display an environment that encourages positive behaviours and bullying prevention in addition to dealing with the devastating effects of bullying after it has already occurred, such as making sure the victims are well supported.

Placing importance on education as a response to bullying, such as the implementation of bullying awareness programs into the curriculum, could be extremely beneficial for staff and students, especially when it is compared to schools that choose to do nothing until after the bullying behaviour has occurred and harm has been inflicted. Bullying and cyberbullying have been shown by the media and the literature, as discussed in Chapter 2.4, to have devastating effects on young people, therefore the promotion of a positive school culture, the promotion of an anti-bullying culture, prevention and other early intervention strategies should be implemented in schools to aid in reducing the amount of bullying that can occur.

Currently in Australia, the eSafety Commissioner has unique powers to deal with serious forms of cyberbullying. However, it is only able to help the victim once the damage has already been inflicted. For example, the eSafety Commissioner can help with the removal of unwanted photos or other forms of harmful internet materials posted online by the cyberbully. Even though this is a very helpful and important tool for victims to have access to, this is still only a reactive step, as the victim has already suffered the negative effects that come with having their content posted online without their consent. Implementing education programs in schools that teach students about the warning signs, teaching them about internet safety, how to build positive relationships, and how to respond to the first signs of bullying behaviour, could lessen the negative impact that bullying can have.

While the findings from South Australia show that legislation does not ensure perfect implementation of bullying policy to protect school students, it is suggested that the legislation will still have a significant impact on schools and the safety and protection of students, compared to Western Australia's compulsion from the Department of Education.

CHAPTER FIVE

Recommendations for anti-bullying responses in Western Australia

This research has compared the publicly available bullying policies of public high schools in Western Australia and South Australia. The findings detailed in Chapter 4 show that South Australia's public high schools' bullying policies are more publicly available and better equipped to deal efficiently with cyberbullying than their counterparts in Western Australia. It was further suggested that the legislation in South Australia and the lack of such legislation in Western Australia is one of the main drivers of the said difference.

Given the said conclusion, i.e., that it would be advisable for Western Australia to adopt similar legislation, this chapter will look at South Australia and Ontario, Canada to draw lessons. Ontario was chosen because it has an extensive legal response to bullying and cyberbullying in its criminal, civil and education law approaches compared to countries such as the US and the UK.

This chapter is organised as follows: Part 5.1 draws lessons from South Australia that may be applied to Western Australia. Part 5.2 examines Ontario's legislation in relation to cyberbullying prevention and legislative action required for the schools in Ontario. This part also includes a historical overview of legislation in Canada, with a focus on Nova Scotia being the first province in Canada to enact a cyberbullying law. Lessons will be drawn from Ontario's legislation that Western Australia may want to adopt, such as creating an anti-cyberbullying culture in high schools. Part 5.3 provides further recommendations as mentioned in the literature. Part 5.4 provides a conclusion to the lessons that can be drawn from South Australia, Ontario and the literature.

5.1 Analysis: What lessons can be drawn from the legislative responses in South Australia?

The following lessons are drawn from South Australia:

a. Protection of children and young people is assigned to the Chief Executive

In South Australia, the *Children and Young People (Safety) Act 2017* (SA), section 145(b)(ii) state that the Chief Executive's⁷⁶² function is to 'provide guidance on matters relating to the protection of children and young people, including how to deal with cases involving the bullying or harassment of a child or young person'.⁷⁶³ Other functions of the Chief Executive include 'developing codes of conduct and principles of good practice for caring for, or working with children and young people'⁷⁶⁴ as well as 'defining appropriate standards of care for ensuring the safety of children and young people'.⁷⁶⁵ This Act requires certain organisations to ensure and provide a child safe environment.

b. Certain organisations including schools are required to adopt a bullying prevention policy

The *Children and Young People (Safety) Act 2017* (SA) requires certain organisations to ensure and provide a child safe environment. The South Australian government works with these organisations to ensure that they include bullying prevention policies to provide a child safe environment.⁷⁶⁶ This includes guidance on the organisation's code of conduct on matters such as respectful, professional, and ethical behaviour of staff, as well as guidance on how the organisation will address bullying. These factors fall under the responsibility to provide a child safe environment.

The legislation in South Australia provides for a state wide bullying prevention strategy. The Act outlined the need for schools to adopt a bullying prevention policy or strategy that:

- i. Uses the national definition of bullying;
- ii. Outlines and identifies the steps that the school will take when preventing bullying;

⁷⁶² The Chief Executive is defined in the *Children and Young People (Safety) Act 2017* as the Chief Executive of the Department.

⁷⁶³ *Children and Young People (Safety) Act 2017* s 145(b)(ii).

⁷⁶⁴ *Children and Young People (Safety) Act 2017* s 145(a).

⁷⁶⁵ *Ibid* s 145(c).

⁷⁶⁶ Government of South Australia (n 415).

- iii. Outlines the steps that the school will take when addressing and responding to bullying incidences;
- iv. Outlines how bullying can be reported;
- v. Ensures that the children and young people who are involved with bullying will be safe and supported;
- vi. Supports the need for school staff and educators to be skilled and confident when addressing bullying at school;
- vii. Includes access for school staff to training and resources that teach them how to recognise bullying, and how to effectively respond to bullying and cyberbullying, how to teach students about bullying and cyberbullying, and online safety;
- viii. School staff will also have access to professional development to work effectively with parents, as well as responding to their concerns about bullying.

Schools in South Australia were also given grants to implement evidence-based programs such as the PEACE pack program and the Friendly Schools program that address bullying as well as support positive behaviours within the school and classroom. These programs were found to be successful at reducing the amount of bullying within schools while in the trial period of the program.⁷⁶⁷ In addition, South Australia's other strategies also focus on community involvement, building positive relationships and respectful behaviours, building a welcoming culture and positive environments where children and young people can feel safe, respected, and supported.

These strategies demonstrate that the South Australian government is focused on the protection of children and young people by ensuring that schools are well prepared to deal with bullying and cyberbullying incidences. Schools can only provide a safe environment for children and young people if they prevent and address bullying issues at school. Promoting a positive school environment and modelling respectful behaviours will also aid in the reduction of bullying incidences and hence create a child safe environment.

⁷⁶⁷ Government of South Australia, *12 Month Progress Report: Connected: A Community Approach to Bullying Prevention Within the School Gates and Beyond* (Report, 2020) 7
<<https://www.education.sa.gov.au/sites/default/files/12-month-progress-report-bullying-prevention-strategy.pdf>>.

It is suggested that Western Australia should consider adopting similar strategies. There should be state legislation implemented similar to section 145 of the *Children and Young People (Safety) Act 2017* (SA), focusing on policies regarding bullying and harassment for the protection of children and young people. Although Western Australia enacted the *Children and Community Services Act 2004* (WA), which deals with the wellbeing, protection, and care of children, this Act does not mention the need for guidance to be provided in relation to the protection of children regarding bullying and harassment.

There is also no mention of the development of policies for the protection of children and young people from bullying and harassment, and no mention of these issues in Western Australia's *Education and Care Services National Law (WA) Act 2012* (WA) or in the *School Education Act 1999* (WA). The only mention of a public high school's need to implement a policy pertaining to bullying or cyberbullying in Western Australia is found in the Department of Education's policy stating the requirement that schools must develop a 'plan to support positive student behaviour'.⁷⁶⁸ This responsibility falls solely on the principal of the school. As it is not mandated by state legislation that principals or schools have to implement bullying policies in their schools to protect children and young people, schools in Western Australia may choose not to comply. As shown in the findings in Chapter 4, South Australian schools tend to openly display their school anti-bullying policy to satisfy the state legislation requirement to implement policies regarding bullying. Western Australia, on the other hand, does not have any legislation mandating Western Australian public schools to implement policies. Hence, the difference in the number of Western Australian public high schools that openly displayed their school's anti-bullying policy (51%) in comparison with South Australia (88%). It can be argued that the state legislature in South Australia has compelled more schools to implement an anti-bullying policy in comparison with Western Australian schools, and hence Western Australia should consider implementing such legislation.

Western Australia should also conduct a similar state wide bullying prevention strategy for all public schools in the state to follow. The strategy, as in South Australia should focus on building a positive school environment, respectful relationships with others, and build on community

⁷⁶⁸ Government of Western Australia (n 445).

involvement. Even though this is soft regulation and does not have the compulsion that legislation would have, it would still demonstrate that Western Australia takes child protection seriously.

c. Define and insert bullying and cyberbullying into the Criminal Code

Another lesson that can be drawn from the South Australian approach is the implementation of a cyberbullying law, similar to the Bill that was debated in South Australia following the death of a 13 year old Adelaide student. Libby Bell had committed suicide after suffering bullying at school, as well as online over several social media platforms. Her death prompted the implementation of a law that would make bullying an offence in South Australia's criminal code. Although this Bill was not passed to date, it still raises very important issues and lessons that can be learnt. Bullying and cyberbullying is a serious issue and can lead to devastating effects. Libby was bullied so relentlessly that she felt that her only way to escape the torment was by ending her life.

The Statutes Amendment (Bullying) Bill 2017 (SA) defines bullying to be an event in which one person does one or more of the following to another person:

- i. Expressly or implicitly threatens to cause harm to the person;
- ii. Degrades, humiliates, disgraces or harasses the other person;
- iii. Uses abusive or offensive language towards the other person;
- iv. Gives or sends offensive material to the other person, or leaves it where it can be found by the other person or given to or brought to the attention of the other person;
- v. Publishes or transmits offensive materials by means of the internet or some other form of electronic communication in such a way that will be found by the other person;
- vi. Engages in any other conduct that could cause apprehension or fear in the other person.⁷⁶⁹

⁷⁶⁹ *Statutes Amendment (Bullying) Bill 2017 (SA) Division 7AA s 20A.*

These elements sufficiently cover the scope for incidences of bullying and cyberbullying. The Bill also limits these interactions to behaviours that:

- i. Intend to cause harm or is reckless as to whether harm will be caused;
- ii. Commits more than one act of bullying against the other person over a period of not less than seven days; and
- iii. By doing so, causes harm or serious harm to the other person.⁷⁷⁰

These criteria make sure that a person's freedom of speech is not restricted in any way, and focus on the fact that the behaviour has to be repeated, which is an element of bullying and cyberbullying.

Western Australia should consider implementing similar legislation into its Criminal Code. As lawmakers in Australia seem to be satisfied with the scope of the current legislation in covering bullying and cyberbullying behaviours (See Chapter 3.1), another recommendation is to amend Western Australia's Criminal Code, such as the stalking offence to add more coverage to encompass bullying behaviours wholly.

In South Australia, an element⁷⁷¹ in the stalking offence is similar to an element in the bullying Bill (See Chapter 3.3). In Western Australia, the stalking offence requires repeated communications, directly or indirectly with words or otherwise. This element could include more detail to cover cyberbullying such as 'publishes or transmits offensive material by means of the internet or some other form of electronic communication' or 'communicates with the other person, or to others about the other person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication in a manner that could reasonably be expected to arouse apprehension or fear in the other person'.⁷⁷² The inclusion of this language can make it clearer that it will include cyberbullying.

⁷⁷⁰ Ibid s 20C.

⁷⁷¹ *Criminal Law Consolidation Act 1935* (SA) s 19AA(1)(a)(iva) and (ivb).

⁷⁷² Ibid s 19AA(1)(a)(ivb).

5.2 Analysis: What lessons can be drawn from the legislative responses in Ontario?

This part explores the legislation and policy pertaining to school bullying and school cyberbullying in Ontario, a state in Canada. This part is presented as follows: Part (a) explains the history of Canada's legal approach to cyberbullying and why Ontario has been chosen as a model for a recommended Western Australian proposed legislation. Part (b) explores Ontario's *Education Act* and its amendments by the *Accepting Schools Act 2012*. Part (c) explores the rights of the parents and guardians under the current Ontario legislation. Part (d) explains the rights of the parents at both the classroom level and the Ministry of Education level, provided under the legislation if their child has been victimised by bullying or cyberbullying.

a. History of Canada's legal approaches to cyberbullying and why Ontario has been chosen as a model for a recommended Western Australian proposed legislation

While countries such as the US and the UK have existing laws that can cover the scope of bullying and cyberbullying such as harassment, or electronic forms of harassment, as well as requiring schools to implement anti-bullying policies, Canada responded in a more extensive legal way to bullying and cyberbullying in its criminal, civil and education law approaches.⁷⁷³

While most of Canada's states require their school boards to implement policies or codes of conduct to address issues of bullying and cyberbullying in their schools, Ontario, Canada was chosen due to its extensive definition of bullying, and the inclusion of cyberbullying in its *Education Act*, R.S.O. 1990 c. E.2., as well as its focus on creating a culture of respect and inclusivity within its schools.⁷⁷⁴

⁷⁷³ Jane Bailey, 'Canadian Legal Approaches to 'Cyberbullying' and Cyberviolence: An Overview' (2016) *Ottawa Faculty of Law Working Paper* 1, 5.

⁷⁷⁴ *Ibid* 25.

Canada's attempt to regulate cyberbullying

In 2011, 15 year old Rehtaeh Parson from Nova Scotia, went to a party with a friend. Her mother recounted her saying that at this party she had drunk quite a bit of alcohol and remembered throwing up out of a window.⁷⁷⁵ One of the teenagers at this party was alleged to been having sex with her while she was throwing up out of the window. It was alleged he had told his friend to take a picture of the act.⁷⁷⁶ Rehtaeh was unaware that images were taken during this act. The photo was spread widely online and had also circulated her school. She had experienced cyberbullying as well as bullying in person at school because of the image being spread. Her friends had turned against her, she was called a slut, people harassed her, and boys that she did not know had started contacting her, asking her to have sex with them since she had had sex with their friends.⁷⁷⁷ Rehtaeh had gone to the police, but they had said there was not enough evidence to lay charges.⁷⁷⁸ Rehtaeh's family stated they were told by the police that the photographs were not a criminal issue despite her being 15 years old while the picture was taken.⁷⁷⁹ Rehtaeh attempted suicide 17 months after the incident. She suffered lethal brain damage and was put on life support.⁷⁸⁰ She was taken off life support three days later.⁷⁸¹

An independent review after Rehtaeh's death found errors made by both the police and the Crown in handling her case.⁷⁸² Former Deputy Attorney General Murray Segal, stated that the investigation into the allegations of sexual assault, and distribution of an explicit photo had taken too long, as well as interviews with Rehtaeh did not follow the proper protocol.⁷⁸³ With regards to the Crown, it was determined that the explicit photograph that was circulating could not be child pornography because it was difficult to determine whether those in the photo were 18 years of age.⁷⁸⁴ Segal stated that this was a misunderstanding of the law. Police investigations had also

⁷⁷⁵ CBC News, 'Rape, bullying led to N.S. teen's death, says mom' *CBC News* (Web Page, 9 April 2013) <<https://www.cbc.ca/news/canada/nova-scotia/rape-bullying-led-to-n-s-teen-s-death-says-mom-1.1370780>>.

⁷⁷⁶ Ibid.

⁷⁷⁷ Ibid.

⁷⁷⁸ Ibid.

⁷⁷⁹ Ibid.

⁷⁸⁰ Christie Blatchford, 'Christie Blatchford: Boy in notorious Rehtaeh Parsons photo talks for the first time about what happened' *National Post* (Web Page, 12 March 2015) <<https://nationalpost.com/opinion/christie-blatchford-boy-in-notorious-rehtaeh-parsons-photo-talks-for-first-time-about-what-happened>>.

⁷⁸¹ Ibid.

⁷⁸² Elizabeth McMillan, 'Rehtaeh Parsons case review finds system 'failed' *CBC News* (Web Page, 8 October 2015) <<https://www.cbc.ca/news/canada/nova-scotia/rehtaeh-parsons-case-review-1.3262111>>.

⁷⁸³ Ibid.

⁷⁸⁴ Ibid.

failed to address the cyberbullying that Rehtaeh had experienced, and failed to stop the circulation of the explicit photograph.⁷⁸⁵ Segal stated that the ‘distribution of the photo was not alleviated in any way by the authorities’ intervention’,⁷⁸⁶ arguing that the police could have obtained a search warrant to seize the phones from the boys whom they believed had the explicit photograph.⁷⁸⁷ It was only after Rehtaeh’s death that the case was reopened and the child pornography charges were laid out.⁷⁸⁸

In the independent review, there was also mention of school policies on police investigations. A police liaison officer was told that the police could not investigate on school grounds since the alleged assault did not happen on school grounds, but at a house party.⁷⁸⁹ The Education Minister Karen Casey stated that each education board has different protocols with regards to how and when the police can interact with students.⁷⁹⁰ Since 2013, several improvements have been made including the hiring of an anti-cyberbullying coordinator and extra professional development and training for school administrators and staff.⁷⁹¹

In 2013, nearly 3 weeks following Rehtaeh’s death, Nova Scotia introduced a law, the *Cyber-safety Act*. This legislation aimed to protect victims of cyberbullying as well as hold the bullies accountable for their actions. It also demonstrated that the government had taken cyberbullying seriously⁷⁹² and sent a message that cyberbullying is a serious act with serious consequences.⁷⁹³

Under the *Cyber-safety Act*, cyberbullying is defined as:

“any electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text

⁷⁸⁵ Ibid.

⁷⁸⁶ Ibid.

⁷⁸⁷ Ibid.

⁷⁸⁸ Ibid.

⁷⁸⁹ CBC News, ‘Rehtaeh Parsons report to prompt review of school policies on investigations’ *CBC News* (Web Page, 15 October 2015) <<https://www.cbc.ca/news/canada/nova-scotia/police-board-review-parsons-1.3272934>>.

⁷⁹⁰ Ibid.

⁷⁹¹ Ibid.

⁷⁹² CBC News, ‘Cyberbullying bill positive but could use tweaks: Prof’ *CBC News* (Web Page, 26 April 2013) <<https://www.cbc.ca/news/canada/nova-scotia/cyberbullying-bill-positive-but-could-use-tweaks-prof-1.1387582>>.

⁷⁹³ CBC News, ‘N.S. cyberbullying legislation allows victims to sue’ *CBC News* (Web Page, 7 August 2013) <<https://www.cbc.ca/news/canada/nova-scotia/n-s-cyberbullying-legislation-allows-victims-to-sue-1.1307338>>.

messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional wellbeing, self-esteem or reputation, and includes assisting or encouraging such communication in any way".⁷⁹⁴

This new legislation, the first of its kind in Canada, allowed people 'to sue or seek a protection order from the courts if they or their children are being cyberbullied'.⁷⁹⁵ This law enabled the victims of cyberbullying to apply for protection orders as well as to help identify the cyberbully.⁷⁹⁶ With regards to lawsuits, parents of the cyberbullies could be held liable for damages if the bully is a minor.⁷⁹⁷ The penalties under this legislation range from 'informal discussions to jail time, \$5,000 fines, or confiscations of their phones or computers'.⁷⁹⁸ This law also led to the creation of an investigative unit dedicated to pursuing and penalising cyberbullies.⁷⁹⁹ This Act was created to fill a gap in the law, as well as serve as an alternative solution to defamation.⁸⁰⁰

While supportive of the legislation, Law Professor Wayne Mackay made recommendations that there should be a focus on 'education, changing the laws and preventing cyberbullying by teaching young people about how to be responsible online citizens'.⁸⁰¹ He argued that one cannot simply demonise bullies, and that research has suggested bystanders and victims themselves can become the bullies.⁸⁰² Professor Mackay further stressed that there be a focus on restorative approaches.⁸⁰³

⁷⁹⁴ *Cyber-safety Act 2013* s 3(b).

⁷⁹⁵ The Canadian Press, 'Cyberbullying law inspired by Rehtaeh Parsons' suicide takes effect' *Toronto Star* (Web Page, 24 December 2014) <https://www.thestar.com/news/canada/2013/08/07/cyberbullying_law_inspiredly_by_rehtaeh_parsons_suicide_takes_effect.html>.

⁷⁹⁶ Ibid.

⁷⁹⁷ Ibid.

⁷⁹⁸ CBC News (n 792).

⁷⁹⁹ Ibid.

⁸⁰⁰ Brett Ruskin, 'Court strikes down anti-cyberbullying law created after Rehtaeh Parsons's death' *CBC News* (Web Page, 11 December 2015) <<https://www.cbc.ca/news/canada/nova-scotia/cyberbullying-law-struck-down-1.3360612>>.

⁸⁰¹ CBC News (n 792).

⁸⁰² Ibid.

⁸⁰³ Ibid.

It is suggested that Western Australia would follow the advice given by Professor Mackay. Western Australia should focus on education and legislative change. Bullying can often be a complex issue and thus creating a law that will criminalise bullying should not be the only way of preventing or reducing bullying. Education and restorative approaches in conjunction with changing the laws will be a better solution, where the law will only act as a last resort when dealing with bullying behaviours.

In 2015, two years after the *Cyber-safety Act* was passed, legal experts have continued to criticise it, stating that it violated the freedom of expression that is guaranteed by the Charter of Rights and Freedoms.⁸⁰⁴

The same year, one of the investigators within the CyberScan unit⁸⁰⁵ which was established to pursue cyberbullies, reported that since the creation of the Act, 559 complaints of cyberbullying were filed with CyberScan, but only 2 of those complaints had proceeded to court.⁸⁰⁶ The rest of the complaints were resolved through informal negotiations. The investigator stated that the aim of the CyberScan unit is to educate against cyberbullying and resolve cyberbullying incidents.⁸⁰⁷ Under this legislation, victims can seek a protection order and it was reported that fewer than ten protection orders were issued since the creation of the law in 2013.⁸⁰⁸

David Fraser, a Halifax privacy lawyer, challenged the legislation, stating that it is so broad and captures a wide range of issues, that one would not consider to be cyberbullying. He argued that anything that is done online or electronically, and can hurt a person's feelings, is considered

⁸⁰⁴ CBC News, 'Halifax lawyer to launch charter case challenge of Cyber-Safety Act' *CBC News* (Web Page, 15 August 2015) <<https://www.cbc.ca/news/canada/nova-scotia/halifax-lawyer-to-launch-charter-case-challenge-of-cyber-safety-act-1.3192440>>.

⁸⁰⁵ CyberScan Unit is a government enforcement unit that provide primarily informal responses to cyberbullying and non consensual intimate image distribution. Government of Nova Scotia, 'CyberScan' *Government of Nova Scotia* (Web Page, 2022) <<https://novascotia.ca/cyberscan/>>.

⁸⁰⁶ Leah Collins Lipsett, 'Nova Scotia's anti-cyberbullying law works despite criticism, says supporters' *CBC News* (Web Page, 1 May 2015) <<https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-s-anti-cyberbullying-law-works-despite-criticism-say-supporters-1.3056834>>.

⁸⁰⁷ Ibid.

⁸⁰⁸ Ibid.

cyberbullying under the law.⁸⁰⁹ In doing so ‘you can be subjected to an order that can cut you off from the internet, confiscate your electronic devices’.⁸¹⁰ He argued that the law was written and passed too quickly with very little debate.⁸¹¹ Fraser further claimed that the law is too broad and had the power to infringe on the freedom of expression online.⁸¹²

Judge Gerald Moir held similar views stating that ‘a neighbour who calls to warn that smoke is coming from your upstairs window causes fear; a lawyer who sends a demand letter by fax or email causes intimidation,’⁸¹³ are both cyberbullying, ‘according to the literal meaning of the definitions’⁸¹⁴ in the *Cyber Safety Act*.

Professor Mackay argued that there should be different standards for adults and youth, as well as the chance for the accused to defend themselves before the matter goes to court. He also stated that while the definition of cyberbullying may be too broad, the act is still necessary as it gives victims of cyberbullying remedies that were not available to them before.⁸¹⁵

In late 2015, Canadian Supreme Court Justice Glen McDougall ruled that the Nova Scotia anti-cyberbullying law must be eliminated and struck down in its entirety.⁸¹⁶ In cases of other legislations that have been struck down by the courts, the legislator has been given one year grace period to rewrite it, however, Justice McDougall stated that temporary suspensions are not warranted as it would ‘condone further infringements of charter-protected rights and freedoms’.⁸¹⁷

⁸⁰⁹ CBC News, ‘Nova Scotia anti-cyberbullying law challenge in Supreme Court’ *CBC News* (Web Page, 25 August 2015) <<https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-anti-cyberbullying-law-challenged-in-supreme-court-1.3202681>>.

⁸¹⁰ Ruskin (n 800).

⁸¹¹ CBC News (n 804).

⁸¹² Ruskin (n 800).

⁸¹³ Lipsett (n 806).

⁸¹⁴ Ibid.

⁸¹⁵ Ibid.

⁸¹⁶ Ruskin (n 800).

⁸¹⁷ Ibid.

As a result of the law being struck down, many people feel as though they are ‘falling through the cracks’.⁸¹⁸ Cyberbullying is a serious issue that needs to be addressed, but the legislation was too broad and protection orders can include very restrictive conditions.⁸¹⁹ With the cyberbullying law in Nova Scotia struck down, there is a recognised gap in the law, however, some argue that a focus on education may be more effective than legislation.⁸²⁰ Victims of online harassment in Nova Scotia have since had to rely on police investigations or expensive civil court actions.⁸²¹

Professor MacKay stated that a new cyberbullying law should be reintroduced and have the investigative unit back and running.⁸²² He stated that the new law should allow informal requests to take down the offensive materials, but also allow civil action for those who want to hold offenders accountable.⁸²³ He reiterated that the CyberScan unit from the past cyberbullying legislation had allowed for complaints to be resolved informally without having to go to court.⁸²⁴ The current gap in the law is that there is no way to deal with cyberbullying involving, ‘cases that aren’t criminal but are just as damaging’.⁸²⁵

Bill 27 the *Intimate Images and Cyber-protection Act* was created to replace the struck down cyberbullying legislation in Nova Scotia. This new cyberbullying legislation defines more narrowly cyberbullying, removed the abilities of the CyberScan unit, which had allowed victims under the old law to seek court orders to compel perpetrators to stop image distribution or harmful communications.⁸²⁶ Under the new law, the victims of cyberbullying will have to seek recourse through the courts themselves, rather than go through the CyberScan unit.⁸²⁷ This gives

⁸¹⁸ CBC News, ‘Lenore Zann ‘disappointed’ anti-cyberbullying laws struck down’ *CBC News* (Web Page, 11 December 2015) <<https://www.cbc.ca/news/canada/nova-scotia/lenore-zann-cyberbullying-decision-disappointed-1.3361037>>.

⁸¹⁹ Ibid.

⁸²⁰ Ibid.

⁸²¹ Michael Tutton, ‘Cyberbullying laws needed that allow for non-criminal solutions: professor’ *CBC News* (Web Page, 26 July 2016) <<https://www.cbc.ca/news/canada/nova-scotia/non-criminal-solutions-cyberbullying-wayne-mackay-1.3694787>>.

⁸²² Ibid.

⁸²³ Ibid.

⁸²⁴ Ibid.

⁸²⁵ Ibid.

⁸²⁶ Paul Palmeter, ‘Privacy lawyer who challenged cyberbullying law worries new bill swings too far’ *CBC News* (Web Page, 20 October 2017) <<https://www.cbc.ca/news/canada/nova-scotia/privacy-lawyer-says-cyber-protection-act-needs-changes-1.4363615>>.

⁸²⁷ Ibid.

the victims the option of hiring a lawyer, or going through the court process by themselves.⁸²⁸ Both these options can be expensive, complicated and inaccessible for most victims and their families.⁸²⁹

Fraser, who had challenged the previous cyberbullying law, claimed that the new legislation swung too far in the opposite direction, stating that it ‘puts far too much of the burden on victims of cyberbullying’⁸³⁰ and that it will be a barrier for victims to access justice. Fraser further argued that if someone is looking to get an intimate photograph taken down, the new legislation would cause significant harm to the victim due to the delay in the court process.⁸³¹ He compared the previous cyberbullying legislation, which as a process was too streamlined, to a process that is now an incredibly cumbersome bureaucratic process.⁸³² Professor MacKay also argued that the new legislation does not go far enough to protect victims.⁸³³

In the new *Intimate Images and Cyber-protection Act* the definition of cyberbullying includes:

“an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual’s health or wellbeing where the person responsible for the communication maliciously intended to cause harm to another individuals health or wellbeing or was reckless with regard to the risk of harm to another individuals health or wellbeing, and may include:

- i. Creating a web page, blog, or profile in which the creator assumes the identity of another person
- ii. Impersonating another person as the author of content or a message
- iii. Disclosure of sensitive personal facts or breach of confidence
- iv. Threats, intimidation, or menacing conduct

⁸²⁸ Ibid.

⁸²⁹ Ibid.

⁸³⁰ Ibid.

⁸³¹ Marieke Walsh and Alexander Quon, ‘Nova Scotia’s new cyber safety bill is a barrier for victims: Privacy lawyer’ *Global News* (Web Page, 19 October 2017) <<https://globalnews.ca/news/3814720/privacy-lawyer-cyber-safety-bill/>>.

⁸³² Ibid.

⁸³³ Jean Laroche, ‘New cyberbullying bill moving forward despite criticism that it’s ‘too cautious’ *CBC News* (Web Page, 23 October 2017) <<https://www.cbc.ca/news/canada/nova-scotia/cyber-bullying-bullying-wayne-mackay-law-amendments-1.4367176>>.

- v. Communications that are grossly offensive, indecent, or obscene
- vi. Communications that are harassment
- vii. Making a false allegation
- viii. Communications that incite or encourage another person to commit suicide
- ix. Communications that denigrate another person because of any prohibited ground of discrimination listed in Section 5 of the *Human Rights Act* or
- x. Communications that incite or encourage another person to do any of the foregoing⁸³⁴

The difference between the *Cyber-safety Act* definition of cyberbullying in contrast to the new definition of cyberbullying in the *Intimate Images and Cyber-protection Act* is that the new definition now requires the plaintiff to show that there was malice or recklessness intent on the part of the defendant.⁸³⁵ In the definition of cyberbullying in the *Cyber-safety Act*, it had failed to ‘require proof of intent or harm’.⁸³⁶ The new cyberbullying definition also only includes conduct that causes or is likely to cause harm to the plaintiff. This definition significantly narrows the scope of conduct, as the former definition includes any conduct that causes distress to the plaintiff to be cyberbullying.⁸³⁷ A criticism of the cyberbullying definition from the *Cyber-safety Act* was that it was too broad and had captured conduct that was far beyond what the Act intended.⁸³⁸ With the new narrower definition, the bar to prove that behaviour is cyberbullying is set significantly higher, as well as the additional element of intent.

While this occurred in Nova Scotia and not in Ontario, it is interesting to see how another province in Canada dealt with issues of cyberbullying. Nova Scotia’s first and second cyberbullying laws draw an important lesson to the fine line between the definition of behaviours that capture cyberbullying but that also does not infringe on the freedom of expression, but also does not make the process too streamlined to get protection orders, but gives victims of cyberbullying access to justice. It is a balancing act which can be hard to achieve. Similar to the

⁸³⁴ *Intimate Images and Cyber-protection Act* 2017 s 3(c).

⁸³⁵ Brayden McDonald, ‘Cyber-Bullying & Law Reform: Rights versus Harms on Trial’ *CanLII Connects* (Web Page, 1 June 2018) <<https://canliiconnects.org/en/commentaries/62194>>.

⁸³⁶ *Crouch v. Snell*, 2015 NSSC 340, para 187.

⁸³⁷ McDonald (n 835).

⁸³⁸ *Ibid.*

bullying bill introduced in South Australia, when developing a bullying or cyberbullying law, Western Australia has to take into account the balance between capturing bullying and cyberbullying behaviours, but also not infringing on freedom of expression. The definition of cyberbullying in Nova Scotia's first cyberbullying law was too wide and infringed on the freedom of expression.

b. Ontario's Education Act and its amendments by the Accepting Schools Act 2012

Bill 13 Accepting Schools Act 2012, S.O. 2012, c. 5

Unlike Nova Scotia, the Canadian State of Ontario has taken a different approach to cyberbullying by incorporating cyberbullying into the *Education Act*, rather than introducing a standalone cyberbullying legislation.

In Ontario, Bill 13, also known as the *Accepting Schools Act*, was introduced into the Legislative Assembly of Ontario in November 2011.⁸³⁹ This legislation sought to amend Ontario's *Education Act* with respect to bullying and other matters. The *Accepting Schools Act* highlights the importance of having a positive school environment, feeling welcome, accepted and connected to the school, as well as having a safe, comfortable, equitable and inclusive school for all students, including LGBT students.⁸⁴⁰

The parliamentary debates of Bill 13 will be examined to better understand the cyberbullying policy options that were considered at the school level. The examination of the debates will aid in answering the second research question by highlighting options that Western Australia should consider when implementing similar legislation.

The *Accepting Schools Act* aims to help make schools safer and more welcoming. The goal of this legislation is to change attitudes and behaviours. One of the provisions of this Act was to introduce tougher consequences for bullying and any hate motivated behaviours.⁸⁴¹ The Act also

⁸³⁹ Legislative Assembly of Ontario, 'Bill 13, Accepting Schools Act 2012' *Legislative Assembly of Ontario* (Web Page, 2022) <<https://www.ola.org/en/legislative-business/bills/parliament-40/session-1/bill-13/status>>.

⁸⁴⁰ *Accepting Schools Act*, 2012, S.O. 2012, c. 5.

⁸⁴¹ Ontario, *Parliamentary Debates*, Legislative Assembly, 7 December 2011, 408.

sought to provide clear expectations and increased accountability for school boards.⁸⁴² This included having expulsion as a possible consequence in response to bullying.⁸⁴³

In the second reading of the *Accepting Schools Act*, parliament member Laurel Broten discussed the harm bullying can cause within school environments and the detrimental effects it can have on students, as well as the importance of a positive school environment to reducing the number of bullying behaviours. The focus of Broten's speech was on teaching students about positive relationships.⁸⁴⁴ She referred to research that states that 'students who feel welcome, accepted and connected to school are more likely to succeed academically'.⁸⁴⁵ This is in contrast to research findings on the effects of bullying, rejection, exclusion and estrangement on a young person, leading to behaviour problems such as 'low interest in school, lower student achievement and higher dropout rates'.⁸⁴⁶ Broten stated that students cannot be expected to perform well at school if the environment they are in makes them feel insecure and intimidated.⁸⁴⁷

Homophobia had led to major issues with regards to harassment and aggression. Broten referenced a survey that found '64% of lesbian, gay, bisexual, transgender or queer students had felt unsafe at school'.⁸⁴⁸ The impact that homophobia and bullying can lead to devastating effects, with students feeling as though they have no way to escape the bullying other than to take their own lives.⁸⁴⁹ Broten states that another path needs to be created, one of hope, happiness, safety and acceptance.⁸⁵⁰

As bullying is a complex social issue, which can relate to difficulties a person has at home, or outside of school, and can also manifest in a different way such as physical, verbal, social or cyber based, addressing bullying is not just limited to punishing the bully or supporting the victims of the bullying, but also reaching out and supporting the perpetrators of the bullying.⁸⁵¹

⁸⁴² Ibid.

⁸⁴³ Ibid.

⁸⁴⁴ Ibid 403.

⁸⁴⁵ Ibid.

⁸⁴⁶ Ibid.

⁸⁴⁷ Ibid.

⁸⁴⁸ Ibid 404.

⁸⁴⁹ Ibid.

⁸⁵⁰ Ibid.

⁸⁵¹ Ibid.

Both victims and perpetrators of bullying may ‘experience a range of psychosocial problems that may extend into adolescence and adulthood’,⁸⁵² thus both the bully and the victim, need support.

Broten emphasised the need for a strong education system, stating that ‘investing in our school system is an investment in our future’.⁸⁵³ By building a strong education system, it will prepare students to become respectful, positive, and contributing members of society. In the future, these students will be our doctors, teacher, policy makers, farmers, and engineers. Therefore, it is necessary to have a safe, healthy, inclusive school environment to allow students to succeed.

A positive school climate exists when all members of the school community feel safe, comfortable, and accepted.⁸⁵⁴ All students deserve to feel safe at school with an environment that is ‘inclusive, accepting, regardless of race, ancestry, place of origin, ethnic origin, citizenship, creed, sex, sexual orientation, age, family status, disability or other factors’.⁸⁵⁵

In her speech, Broten mentioned Bill 212, which was created based on recommendations and feedback from the safe school’s action team and a team of safety and education experts.⁸⁵⁶ This team had looked at and reviewed bullying prevention strategies and previous safe school legislation. Bill 212 amended the *Education Act* by adding bullying as an offence when considering suspension.⁸⁵⁷ This amendment also replaced mandatory suspensions and expulsions (except in certain circumstances) and added the requirement that the principal and school board must consider the mitigating factors as well as any other factors that may be relevant before the student is suspended or expelled.⁸⁵⁸ This allows the principal and school board to assess the situation before they determine that suspension or expulsion is the appropriate response to the student’s behaviour. This amendment also implemented programs for students who are on a long-term suspension or expulsion.⁸⁵⁹ These programs give the students additional support, such

⁸⁵² Ibid.

⁸⁵³ Ibid.

⁸⁵⁴ Ibid 405.

⁸⁵⁵ Ibid 407.

⁸⁵⁶ Ibid 405.

⁸⁵⁷ Ibid.

⁸⁵⁸ Ibid.

⁸⁵⁹ Ibid.

as anger management or substance abuse counselling.⁸⁶⁰ While this was a step in the right direction to creating safer schools by amending behaviour discipline, more work needed to be done.

In making schools more welcoming, another amendment under this Act was to implement programs that support and ‘promote gender equity, anti-racism, understanding and respect for people with disabilities and people of all sexual orientations and gender identities, including groups with the name Gay-Straight Alliance’.⁸⁶¹ Programs and activities that promote these groups will help students find support and let them know that they are not alone, as well as send a message of inclusion and respect within the community.

A significant amendment under this Act was the implementation of a legal requirement from school boards ‘to have policies on bullying prevention and early intervention, progressive discipline, and equity in inclusive education’.⁸⁶² The amendment added the definition of ‘bullying’ to the *Education Act*. It also implemented a designated week in November known as Bullying Awareness and Prevention Week, which is aimed to encourage bullying prevention.⁸⁶³ The amendment also requires school boards to report on their progress in establishing a positive learning environment within the schools.⁸⁶⁴ This is to promote accountability within school boards. The amendment also ‘requires organisations using school property to follow standards consistent with the provincial code of conduct’.⁸⁶⁵ This code of conduct sets a standard of behaviour that all school boards must follow, such as ‘everyone has a responsibility to promote a safe environment; all members of the school community are to be treated with respect and dignity; everyone has a responsibility to resolve conflicts in a way that is civil and respectful; everyone is expected to resolve conflict without using violence’.⁸⁶⁶ The amendment focused on a whole community approach to making schools safe, inclusive and accepting.

⁸⁶⁰ Ibid.

⁸⁶¹ Ibid 408.

⁸⁶² Ibid.

⁸⁶³ Ibid.

⁸⁶⁴ Ibid.

⁸⁶⁵ Ibid.

⁸⁶⁶ Ibid.

Bill 14 Anti-Bullying Act

Bill 14, also known as the *Anti-Bullying Act* was introduced into the Legislative Assembly of Ontario on the same day as Bill 13, the *Accepting Schools Act*.⁸⁶⁷ While both bills have a similar purpose, the impact of the bills are different. The *Accepting Schools Act* was introduced by the Liberal government, while the *Anti-Bullying Act* was introduced as a Private Members Bill by the Progressive Conservatives.⁸⁶⁸ Both Bills had the goal of eradicating bullying.

During the second reading of the *Accepting Schools Act*, Lisa MacLeod, a member of the Progressive Conservatives caucus, while agreeing that bullying is a very serious issue that needs to be eradicated, stated that there is also a need for an anti-bullying legislation.⁸⁶⁹ She mentioned both bills being complementary but not competing.⁸⁷⁰ MacLeod further recounted lobbying the government to pause the second reading speech so that both parties could negotiate a process that would send both bills to merge. The government had ultimately chosen to table Bill 14 and move ahead with Bill 13.⁸⁷¹ Aspects from Bill 14 were included within Bill 13, but MacLeod firmly believed that a proper merge would have created a remarkable anti-bullying legislation.⁸⁷²

In her speech, MacLeod made a comparison between the two bills. She claimed that Bill 14's definition of bullying had focused on what constituted bullying and how it affects the victim, and the impact of bullying on the school environment, whereas in Bill 13, the definition of bullying was focused on reasons for bullying such as the power imbalance based on individual factors such as race, gender and religion.⁸⁷³ Bill 14 had also included a definition of cyberbullying where Bill 13 did not.⁸⁷⁴ When Bill 13 was first introduced, it did not include a definition of cyberbullying. Bill 13 had only mentioned cyberbullying as an electronic form of bullying.⁸⁷⁵ The definition of cyberbullying that was later included in the amendment of the *Education Act*,

⁸⁶⁷ Legislative Assembly of Ontario, 'Bill 14, Anti-Bullying Act, 2012' *Legislative Assembly of Ontario* (Web Page, 2022) <<https://www.ola.org/en/legislative-business/bills/parliament-40/session-1/bill-14/status>>.

⁸⁶⁸ Legislative Assembly of Ontario, 'Lisa MacLeod' *Legislative Assembly of Ontario* (Web Page, 2022) <<https://www.ola.org/members/all/lisa-macleod>>.

⁸⁶⁹ Ontario, *Parliamentary Debates*, Legislative Assembly, 26 March 2012, 1266.

⁸⁷⁰ Ibid.

⁸⁷¹ Ibid.

⁸⁷² Ibid.

⁸⁷³ Ibid 1267.

⁸⁷⁴ Ibid.

⁸⁷⁵ Ibid.

had come from Bill 14. Macleod stated that a definition of bullying must be ‘all encompassing, pertaining to all members of the school community’.⁸⁷⁶ She argued that there needs to be safeguards that protect students from all acts of bullying, including but not limited to homophobic acts.⁸⁷⁷

Bill 14 also focused more on bullying prevention whereas Bill 13 focused more on discipline, which according to Macleod is reactionary and punitive.⁸⁷⁸ In Bill 14, bullying prevention was inserted into the provincial curriculum, meaning that every student attending school would receive education on bullying prevention as a part of the curriculum.⁸⁷⁹ Macleod stated that this would enable the prevention of bullying as it would begin in kindergarten and continue through to secondary grades.⁸⁸⁰ Bill 13 mainly focused on disciplinary actions in response to bullying.⁸⁸¹ Bill 14 also supports the need for rehabilitation of perpetrators of bullying.⁸⁸² This bill would ensure that schools will provide remedial programs for bullying perpetrators as well as for victims of bullying.⁸⁸³ The remedial program for bullying is aimed to assist recovery for victims of bullying, as well as discouraging perpetrators of bullying from continuing to engage in bullying behaviours.⁸⁸⁴ These programs must be provided by social workers, psychologists, or other trained professionals.⁸⁸⁵

Another issue that Macleod had with Bill 13 was the requirement that ‘school boards must each establish their own policies and guidelines regarding bullying, prevention and intervention and that these policies must be approved by the Minister of Education’.⁸⁸⁶ There are concerns that by having school boards implementing their own policies and guidelines, differences across boards

⁸⁷⁶ Ibid 1269.

⁸⁷⁷ Ibid.

⁸⁷⁸ Ibid 1268.

⁸⁷⁹ Ibid.

⁸⁸⁰ Ibid.

⁸⁸¹ Ibid.

⁸⁸² Ibid.

⁸⁸³ Ibid.

⁸⁸⁴ Ibid.

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid 1269.

can lead to confusion and little accountability.⁸⁸⁷ MacLeod suggested the implementation of one overarching and comprehensive policy for all the schools in the state.⁸⁸⁸

An important issue Macleod pointed out was the use of the phrase, ‘the minister may’.⁸⁸⁹ She argued that the use of the word ‘may’ is worthless, and that it leaves the opportunity for administrators to respond that they ‘are not required to do that’.⁸⁹⁰ It shows a lack of compulsion and a lack of accountability. She also spoke about the importance of school boards to empower students who lead clubs regarding gender equity, anti-racism, respect for people with disabilities, and people of all sexual orientations.⁸⁹¹ She claimed that while bullying can single out certain traits, it is not limited to students who display those traits, but rather anyone can become a target of bullying.⁸⁹² She argued that the regulation of this issue conveys a message that ‘some grounds of bullying merit more attention and protection than others’.⁸⁹³ She claimed that the scope is too narrow to promote true equity, and is quiet on creating a safe environment for speaking about bullying.⁸⁹⁴

Addressing Bill 13, Parliament member Peter Tabuns spoke about his past experiences with bullying.⁸⁹⁵ He had recalled that when he was a young boy, the principal of his school had come into his classroom to speak about the bullying of a boy that was new in his class midway through the school year. He had recalled the principal saying ‘what you as a class are doing with this child, this kid, is unconscionable. That’s not the way we raise you. That’s not the way we teach you’.⁸⁹⁶ He stated that the principal made it clear she had no patience for bullying and had taken the responsibility to address and change the thinking and culture of the class.⁸⁹⁷ Tabuns emphasised the need for addressing bullying at the root, by teaching empathy, respect, understanding and acceptance. In addition, there needs to be clear consequences, awareness

⁸⁸⁷ Ibid.

⁸⁸⁸ Ibid.

⁸⁸⁹ Ibid 1270.

⁸⁹⁰ Ibid.

⁸⁹¹ Ibid.

⁸⁹² Ibid.

⁸⁹³ Ibid.

⁸⁹⁴ Ibid.

⁸⁹⁵ Ibid 1275.

⁸⁹⁶ Ibid.

⁸⁹⁷ Ibid.

raising in classrooms as well as in the community, student support and student, parent and community engagement.⁸⁹⁸

Before Bill 13 was given Royal Assent, the ‘best’ parts of Bill 14 were merged into it.⁸⁹⁹ While Bill 14 was not given Royal Assent ultimately, lessons can still be drawn from this bill. The debates on Bill 13 and Bill 14 have shown that an education legislation needs to have a clear definition of bullying and cyberbullying, have tougher consequences for bullying and any hate motivated behaviours, provide clear expectations and increased accountability for school boards, increase the strength of a positive school environment, implementing programs that promote marginalised groups within schools, and establishing a Bullying Awareness and Prevention Week. Lessons drawn from Bill 14, provide that Western Australia should consider including bullying and cyberbullying prevention in the state curriculum, meaning that every student attending school within the state would receive instruction on bullying prevention as a part of the curriculum. Another consideration for Western Australia is the implementation of one overarching and comprehensive policy for all schools in the state, for example, one policy for all public, private, and independent schools within the state. This would allow a unified understanding of bullying prevention for all schools.

Western Australia should draw lessons from Bill 13 and Bill 14 to be incorporated into its education system and legislation. The literature reviewed in Chapter 2.7, has shown that schools that incorporate positive school cultures and adopt whole school approaches when dealing with issues such as bullying and cyberbullying, have been found to reduce rates of bullying and cyberbullying behaviours.

Western Australia should implement set definitions for bullying and cyberbullying to be incorporated into its education legislation, or adopt the national definition of bullying for Australian schools, into the legislation. Western Australia should also promote within its schools a Bullying Awareness and Prevention Week. In Australia, there is currently a National Day of Action against Bullying and Violence, however not all schools participate in this day. In Ontario,

⁸⁹⁸ Ibid 1276.

⁸⁹⁹ Ibid 1274.

schools are required to participate in a weeklong program to promote the awareness and prevention of bullying.

Following Bill 13, Western Australia should seek to promote or implement programs within schools that support and promote gender equity, anti-racism, understanding and respect for people with disabilities and people of all sexual orientations and gender identities, however, given the criticism in this debate, these programs should protect students from all acts of bullying, not just bullying specific to certain groups.

The following sections are the amendments that Bill 13 made to Ontario's *Education Act*. Western Australia should focus on and draw lessons from these sections when considering amendments to its education legislation.

Education Act

The following sections include the amendments made to the *Education Act*, R.S.O. 1990 c. E.2 by the *Accepting Schools Act*. Under the *Education Act*, bullying is defined as:

- “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; ('intimidation').⁹⁰⁰

⁹⁰⁰ *Education Act*, R.S.O. 1990 c. E.2 s 1(1).

In section 1.0.0.1, the definition of bullying also include behaviour that uses any physical, verbal, electronic, written, or other means.⁹⁰¹

Cyberbullying is defined in section 1.0.0.2 which states that bullying includes bullying by electronic means (commonly known as cyber-bullying), including:

1. creating a web page or a blog in which the creator assumes the identity of another person;
2. impersonating another person as the author of content or messages posted on the internet; and
3. communicating material electronically to more than one individual or posting material on a website that may be accessed by one or more individuals.⁹⁰²

According to the literature, having a clearly defined definition of bullying and cyberbullying is important to ensure that staff and students know the type of behaviours that fall under the scope of bullying and cyberbullying. Western Australia should implement a clear set of definitions in its education legislation, or in a document under the Department of Education for all schools to have access to. This can ensure that all schools are on the same page when it comes to bullying and cyberbullying behaviours. When looking at Western Australia's public high school policies, there was no consistency in the policies with regards to the definition of bullying or cyberbullying. A universal definition for all schools to implement will be useful.

Section 169.1 details the board's duties and powers. Under this section, every board shall 'promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability'⁹⁰³ as well as promote the prevention of bullying.⁹⁰⁴

Under section 170(1)(7.1) every board has to establish and provide professional development to educate school staff about bullying prevention and strategies for promoting positive school

⁹⁰¹ Ibid s 1.0.0.1.

⁹⁰² Ibid s 1.0.0.2.

⁹⁰³ Ibid s 169.1(1)(a.1).

⁹⁰⁴ Ibid s 169.1(1)(a.2).

climates.⁹⁰⁵ Under this section, every board must also provide programs, interventions or support for victims of bullying, witnesses of the bullying, as well as for the bully themselves.⁹⁰⁶ The support is provided by social workers, psychologists, or other professionals as determined by the board.⁹⁰⁷

With regards to behaviour, discipline and safety, section 300.0.1 lists the purpose of this part to include the following:

1. To create schools in Ontario that are safe, inclusive and accepting of all pupils.
2. To encourage a positive school climate and prevent inappropriate behaviour, including bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia or biphobia.
3. To address inappropriate pupil behaviour and promote early intervention.
4. To provide support to pupils who are impacted by inappropriate behaviour of other pupils.
5. To establish disciplinary approaches that promote positive behaviour and use measures that include appropriate consequences and support for pupils to address inappropriate behaviour.
6. To provide pupils with a safe learning environment.⁹⁰⁸

Schools need to encourage a positive school climate that promotes safety, acceptance, and inclusivity. The literature reviewed in Chapter 2.7, has shown that positive school environments lead to a reduction in the number of bullying behaviours on school grounds. While punishments for bullying and cyberbullying is still a necessary procedure for schools to implement within their anti-bullying policies, it is still reactionary, and occurs after the harm has been committed. By promoting a positive school culture where students are respectful, accepting and inclusive of all students, it acts as a preventative measure against bullying and cyberbullying behaviours.

⁹⁰⁵ Ibid s 170(1)(7.1).

⁹⁰⁶ Ibid s 170(1)(7.2).

⁹⁰⁷ Ibid.

⁹⁰⁸ Ibid s 300.0.1.

In section 300.0.2(1) this Act establishes that ‘the week beginning on the third Sunday in November in each year is proclaimed as Bullying Awareness and Prevention Week’.⁹⁰⁹ The goal of this is to promote awareness of bullying as well as the consequences of it within school grounds.⁹¹⁰

As mentioned above, it is not clear how many schools in Western Australia participate in the National Day of Action against Bullying and Violence. Western Australia could establish a week dedicated to promoting awareness of bullying like Ontario. This bullying awareness and prevention day or week could be more heavily promoted in the Western Australian Department of Education.

Section 306(1) lists behaviours that a student engages in that would lead to a possible suspension. Under this section, if the principal believes that a student has engaged in any of the following activities while at school, during any school related activity or activity which can impact the school climate, they shall consider suspension.⁹¹¹ The list of behaviours are as follows:

1. Uttering a threat to inflict serious bodily harm on another person.
2. Possessing alcohol, illegal drugs or, unless the pupil is a medical cannabis user, cannabis.
3. Being under the influence of alcohol or, unless the pupil is a medical cannabis user, cannabis.
4. Swearing at a teacher or at another person in a position of authority.
5. Committing an act of vandalism that causes extensive damage to school property at the pupil’s school or to property located on the premises of the pupil’s school.
6. Bullying.
7. Any other activity that is an activity for which a principal may suspend a pupil under a policy of the board.⁹¹²

⁹⁰⁹ Ibid s 300.0.2(1).

⁹¹⁰ Ibid s 300.0.2(2).

⁹¹¹ Ibid s 306(1).

⁹¹² Ibid.

When considering whether to suspend a student for engaging in any of these activities, the principal must take into account any mitigating factors.⁹¹³

The review of Western Australia's public high schools' policies, as detailed in Chapter 4, shows that suspension and expulsion are possible outcomes for bullying behaviours at school. It may be useful for the Western Australian Department of Education or the education legislation to reflect the same section as Ontario so that all schools in Western Australia will consider suspension and expulsion for bullying behaviours.

Under section 301(1), the establishment of a code of conduct that is to govern the behaviours of all people in schools is listed.⁹¹⁴ The purpose of this code of conduct is:

1. To ensure that all members of the school community, especially people in positions of authority, are treated with respect and dignity.
2. To promote responsible citizenship by encouraging appropriate participation in the civic life of the school community.
3. To maintain an environment where conflict and difference can be addressed in a manner characterized by respect and civility.
4. To encourage the use of non-violent means to resolve conflict.
5. To promote the safety of people in the schools.
6. To discourage the use of alcohol, illegal drugs and, except by a medical cannabis user, cannabis.
7. To prevent bullying in schools.⁹¹⁵

Section 301(7.1), lists strategies that must be included in a school's policy and guideline with regard to bullying prevention and intervention. The strategies to be included in the policies are:

1. Training for all teachers and other staff;
2. Resources to support pupils who have been bullied;
3. Strategies to support pupils who witness incidents of bullying;
4. Resources to support pupils who have engaged in bullying;

⁹¹³ Ibid s 306(2).

⁹¹⁴ Ibid s 301(1).

⁹¹⁵ Ibid s 301(2).

5. Procedures that allow pupils to report incidents of bullying safely and in a way that minimizes the possibility of reprisal;
6. Procedures that allow parents and guardians and other persons to report incidents of bullying;
7. The use of disciplinary measures within the framework described in clause (6)(a) in response to bullying;
8. Procedures for responding appropriately and in a timely manner to bullying;
9. Matters to be addressed in bullying prevention and intervention plans established by boards under section 303.3.

Section 302(3.4) states that every board shall establish policies and guidelines with respect to bullying prevention and intervention in schools, and those policies and guidelines must be consistent with matters established by the Minister under section 301, address all matters in section 301(7.1), and address any matter or requirement that the Minister may specify.⁹¹⁶

Section 303(1) states that every board shall support students who want to establish organisations that promote a safe and inclusive learning environment, promote acceptance and respect for others, as well as for creating a positive school climate.⁹¹⁷ These activities and organisations may include those that promote gender equity, anti-racism, awareness and understanding and respect for people with disabilities, and people of all sexual orientations, or gender identities.⁹¹⁸

As mentioned above, all schools in Western Australia should establish and promote a safe and inclusive learning environment, as well as promoting acceptance and respect for others. These factors not only allow children to feel safe to learn and be themselves, but is also useful in situations such as reporting. The literature in Chapter 2.6, states that a negative school environment makes it less likely for students to report any kind of bullying behaviour. When children feel safe and secure in their environment, and trust that the staff will respond to complaints about bullying, they are more likely to report it. Therefore, schools in Western Australia should focus on building and promoting safe and inclusive learning environments.

⁹¹⁶ Ibid s 302(3.4).

⁹¹⁷ Ibid s 303(1).

⁹¹⁸ Ibid.

Under this Act in section 303.2(1), the Minister shall develop a model bullying prevention and intervention plan to aid the boards in establishing their own model. This Act also requires every board to establish its own bullying prevention and intervention policy, as well as requiring schools to implement them.

In Western Australia, the Department of Education has provided a document for bullying prevention strategies and techniques, however, from the research findings detailed in Chapter 4, it can be seen that not all public schools in Western Australia have followed these guidelines. By implementing a model bullying prevention and intervention plan in its education legislation, it would increase the number of schools that implement bullying prevention techniques in their school bullying policy. By requiring schools to establish their own intervention and prevention strategies in their school bullying policy, as well as requiring schools to implement them, it acts as a preventative measure against bullying and cyberbullying behaviours. It will ensure that schools are aware of the risks of bullying as well as how to intervene when necessary.

Bullying Awareness and Prevention Week

Ontario has dedicated a week beginning on the third Sunday of November to Bullying Awareness and Prevention Week for schools to reinforce the notion that bullying is not accepted in their schools and communities, as well as promote safe schools and positive learning environments.⁹¹⁹

Bullying prevention is everyone's responsibility and therefore requires a whole school approach to stop bullying.⁹²⁰ During this week, staff, students and parents are encouraged to learn about bullying and cyberbullying, as well as the effects it can have on students.⁹²¹ This week is also dedicated to raising awareness of the strategies and resources that are available for bullying

⁹¹⁹ Sudbury Catholic Schools, 'Bullying Awareness and Prevention Week 2021' *Sudbury Catholic Schools* (Web Page, 25 November 2021) <<https://www.sudburycatholicschools.ca/wp-content/uploads/2021/11/Guide-for-School-Boards.pdf>>.

⁹²⁰ Ibid.

⁹²¹ Ibid.

prevention.⁹²² Bullying Awareness and Prevention Week enables schools to promote positive changes in student learning and wellbeing.⁹²³

The Ministry of Education has pointed out the themes that should be focused on during this week, such as:

1. Bullying and Cyberbullying: Raising Awareness
2. Engaging in the Whole School
3. Engaging Students
4. Engaging Parents, Guardians or Caregivers
5. Educators/School Staff Resources.⁹²⁴

The legislation in Ontario goes one step further and incorporates the rights of parents and guardians of children who have been cyberbullied and of children who have cyberbullied. This is explored below.

c. The rights of the parents and guardians under current Ontario legislation

Under section 300.3 of Ontario's *Education Act*, if the principal believes that a student has been harmed as a result of any of the activities listed in section 306(1), they shall notify the parents or guardian of the student who has been harmed, as well as the parent or guardian of the student that engaged in the activities causing the harm.⁹²⁵ The principal must notify them as soon as reasonably possible.⁹²⁶

At the Ministry of Education level under the *Education Act*, the parents and guardians have a right to ask the Ministry to ensure that the school board implement an inclusive education policy.⁹²⁷ Parents and guardians also have the right to ask the Ministry to develop a model plan for intervention and prevention strategies and activities against bullying and cyberbullying to be

⁹²² Ibid.

⁹²³ Ibid.

⁹²⁴ Ibid.

⁹²⁵ *Education Act*, R.S.O. 1990 c. E.2 s 300.3(1).

⁹²⁶ Ibid.

⁹²⁷ Prevnet, 'For Parents' Prevnet (Web Page, 2019) <<https://www.prevnet.ca/resources/policy-and-legislation/ontario/for-parents>>.

implemented in schools.⁹²⁸ Parents and guardians are also able to ask the Ministry for information regarding the number of bullying and cyberbullying incidences that resulted in suspensions and expulsions.⁹²⁹

At the school board level, the parents and guardians have a right to expect that the school board will establish a bullying and cyberbullying prevention and intervention plan.⁹³⁰ Parents and guardians have a right to ask that the school board to make the bullying and cyberbullying prevention plans publicly available.⁹³¹ Parents and guardians also have the right to ensure that the school board periodically review the bullying and cyberbullying plan.⁹³²

At the school level, the parents and guardians have a right to remind school staff that they must report any incidences of bullying and cyberbullying to the principal as soon as they are aware of the bullying behaviour occurring.⁹³³ Parents and guardians also have a right at the school level to consult on matters relating to the planning of bullying and cyberbullying prevention and intervention programs and activities for the school.⁹³⁴

Within Western Australia's public high schools' policies, some policies reflected the need to notify parents of their child's behaviour as soon as reasonably possible, however, not all schools reviewed mentioned this in their policies. Like the legislation section above, Western Australia should consider making this requirement compulsory. In Ontario, parents and guardians have clear rights (as mentioned above) at the Ministry of Education level, the school board level and the school level. Western Australia should consider giving the parents and guardians clear rights so as to add another layer of protection for young people.

d. The rights of the parents if their child has been victimised by bullying or cyberbullying at both the school and the Ministry of Education level

⁹²⁸ Ibid.

⁹²⁹ Ibid.

⁹³⁰ Ibid.

⁹³¹ Ibid.

⁹³² Ibid.

⁹³³ Ibid.

⁹³⁴ Ibid.

Under Ontario's *Education Act*, if a child has been a victim of bullying or cyberbullying, the rights of the parent or guardian at the Ministry of Education level are as follows. Parents and guardians have a right to expect the Ministry to make policies regarding:

- The discipline of students who commit bullying and cyberbullying behaviours;
- The reporting of the bullying incident;
- Provisions of a framework for identifying behaviours that require disciplinary consequences;
- Provisions of a framework for helping students develop healthy relationships.⁹³⁵

Parents and guardians also have a right to expect the Ministry to develop and establish policies regarding the training of school staff.⁹³⁶ Training of school staff includes increasing their ability to respond to bullying behaviours at school, and how to support victims of bullying and cyberbullying, witnesses as well as anyone who engaged in the bullying or cyberbullying behaviours.⁹³⁷ Parents and guardians also have a right to expect the Ministry to establish policies that allow parents to report incidences of bullying and cyberbullying.⁹³⁸ Parents also have a right to expect that those incidences will be followed up in a timely manner, and that there will be resources for support available to the victims and perpetrators of the bullying or cyberbullying behaviour.⁹³⁹

At the school level, the parents and guardians have a right to expect that the principal will investigate the reported bullying or cyberbullying incident.⁹⁴⁰ Parents and guardians also have the right to expect that they will be notified of the results of the investigation, such as the nature of the bullying, the nature of the harm caused, the procedure taken to protect the student's safety, any disciplinary responses that will be taken, and what support will be offered to the students.⁹⁴¹ Parents also have a right to talk to the principal to discuss what support will be provided to their child to ensure that they feel safe at school.⁹⁴²

⁹³⁵ Ibid.

⁹³⁶ Ibid.

⁹³⁷ Ibid.

⁹³⁸ Ibid.

⁹³⁹ Ibid.

⁹⁴⁰ Ibid.

⁹⁴¹ Ibid.

⁹⁴² Ibid.

Parents and guardians also have a right to expect the Ministry to develop and establish policies regarding the training of school staff.⁹⁴³ This includes increasing their ability to respond to bullying behaviours at school, and how to support victims of bullying and cyberbullying, witnesses as well as anyone who engaged in the bullying or cyberbullying behaviours.⁹⁴⁴ Parents and guardians also have a right to expect the Ministry to establish policies to provide resources to support the students who are victims of bullying or cyberbullying behaviours, but also support students who engage in bullying or cyberbullying behaviours.⁹⁴⁵

Western Australia should follow Ontario by providing clear responsibilities and rights of the parents and guardians of children who have been cyberbullied as well as those of children who cyberbully. Given that strong communities are needed to effectively reduce bullying and cyberbullying, there needs to be participation in the resolution of a cyberbullying incident, not only by the school, but by the parents and the community. While there is a heavy responsibility for schools to provide child safe environments, it does not mean that parents and guardians are excluded from this responsibility.

In addition to Ontario's *Education Act*, there are also Canadian criminal laws that can cover the scope of cyberbullying.

The Criminal Code of Canada

Canada's *Criminal Code* does not contain specific provisions pertaining to bullying and cyberbullying, however, depending on the nature and the type of communication, bullying actions can become criminal conduct. Under the *Criminal Code*, there are a range of provisions that can cover bullying behaviours.

Publication of an intimate image without consent is found under section 162.1 of the *Criminal Code*, R.S.C., 1985, c. C-46. Under this section, everyone who publishes, distributes, sells, or advertises an intimate image of a person knowing that the person in the images did not give their

⁹⁴³ Ibid.

⁹⁴⁴ Ibid.

⁹⁴⁵ Ibid.

consent, is guilty of an offence.⁹⁴⁶ Under the *Criminal Code*, an intimate image is defined as a visual recording of a person, whether the person is nude, exposing their genital organs, or is engaged in explicit sexual activity, where at the time of recording, the circumstance gives rise to a reasonable expectation of privacy.⁹⁴⁷ The offence can be prosecuted as an indictable offence with a maximum penalty of 5 years imprisonment or as an offence punishable on summary conviction.⁹⁴⁸ Other consequences can include seizure of the offender's computer, phone, or any other device used to share the image, an order to remove the intimate images from the internet if they were posted without the consent of the person in the images, or an order to reimburse the victim for the financial cost incurred for removing the image from the internet.⁹⁴⁹

Under section 163.1 of the *Criminal Code*, it is an offence to make, distribute, possess, or access child pornography. Under this section, child pornography is defined as a visual representation such as a photo, film or video, that shows a person under the age of or is depicted as being under the age of 18 years old, engaging in explicit sexual activity, or the dominant characteristic of the depiction is for a sexual purpose of a sexual organ of a person under the age of 18 years.⁹⁵⁰

Any person who makes, prints, or possesses child pornography for the purpose of publication is guilty of an offence with a maximum penalty of 14 years imprisonment, with a minimum punishment of imprisonment for 1 year.⁹⁵¹ Any person who transmits, makes available distributes or sells child pornography for the purpose of transmission is guilty of an offence with a maximum penalty of 14 years imprisonment, with a minimum punishment of imprisonment for 1 year.⁹⁵² Any person who possesses child pornography is guilty of an indictable offence with a maximum penalty of 10 years imprisonment and to a minimum punishment of 1 year imprisonment, or as an offence punishable on summary conviction and liable to a maximum

⁹⁴⁶ *Criminal Code*, R.S.C., 1985, c. C-46 s 162.1(1).

⁹⁴⁷ *Ibid* s 162.1(2).

⁹⁴⁸ *Ibid* s 162.1(1).

⁹⁴⁹ Affleck & Barrinson, 'Cyberbullying laws in Canada' *Affleck & Barrinson* (Web Page, 2021)

<<https://criminallawoshawa.com/cyberbullying-laws-in-canada/>>.

⁹⁵⁰ *Criminal Code*, R.S.C., 1985, c. C-46 s 163.1(1)(a).

⁹⁵¹ *Ibid* s 163.1(2).

⁹⁵² *Ibid* s 163.1(3).

penalty of 2 years less one day imprisonment and to a minimum punishment of 6 month imprisonment.⁹⁵³

Under section 241 of the *Criminal Code*, it is an offence to counsel, abets or aid a person to die by suicide.⁹⁵⁴ This offence can be prosecuted as an indictable offence with a maximum penalty of 14 years imprisonment, whether suicide ensues or not.⁹⁵⁵ Exemptions to this section apply to medical practitioners, nurses, pharmacists, if they provide a person with medical assistance in dying.⁹⁵⁶

Criminal harassment under section 264 of the *Criminal Code* states that no person shall engage in conduct that causes another person reasonably in the circumstances, to fear for their safety or for the safety of others.⁹⁵⁷ The type of conduct mentioned in this section refers to repeated following from place to place, repeated communication either directly or indirectly, besetting or watching the dwelling house or place where the person resides, works, carries out their business, or engaging in threatening conduct directed at the person or at their family members.⁹⁵⁸ This offence can be prosecuted as an indictable offence with a maximum penalty of 10 years imprisonment or as an offence punishable on summary conviction.⁹⁵⁹

Under section 264.1 of the *Criminal Code*, it is an offence for a person to utter, convey or cause another person to receive a threat to cause death or bodily harm to the person, to burn, destroy or damage real or personal property, or to kill, poison or injure an animal that is the property of the person.⁹⁶⁰ Every person who is guilty of making a threat to cause death or bodily harm can be prosecuted as an indictable offence with a maximum penalty of 5 years imprisonment or as an offence punishable on summary conviction.⁹⁶¹ Every person who is guilty of making a threat to cause damage to property, or harm an animal, can be prosecuted as an indictable offence with a

⁹⁵³ Ibid s 163.1(4).

⁹⁵⁴ Ibid s 241(1).

⁹⁵⁵ Ibid.

⁹⁵⁶ Ibid s 241(2), (3), (4).

⁹⁵⁷ *Criminal Code*, R.S.C., 1985, c. C-46 s 264(1).

⁹⁵⁸ Ibid s 264(2).

⁹⁵⁹ Ibid s 264(3).

⁹⁶⁰ Ibid s 264.1(1).

⁹⁶¹ Ibid s 264.1(2).

maximum penalty of 2 years imprisonment or as an offence punishable on summary conviction.⁹⁶²

Under section 265, a person commits assault when without the other persons consent, apply force intentionally either directly or indirectly to that person, attempts or threatens to apply force where the person believes on reasonable grounds that they have the ability to effect that purpose, or openly wears or carries a weapon or an imitation of a weapon and accosts that person.⁹⁶³

Sexual assault and sexual assault with a weapon also applies under this section.⁹⁶⁴ The offence of assault can be prosecuted as an indictable offence with a maximum penalty of 5 years imprisonment or as an offence punishable on summary conviction.⁹⁶⁵

Defamatory libel is defined under section 298 of the *Criminal Code* as matter that is published without lawful justification that is likely to injure the reputation of a person by exposing them to ridicule, insult, and hatred.⁹⁶⁶ Defamatory libel can be expressed directly or by insinuation, such as words marked on any substance.⁹⁶⁷ Publishing libel means to exhibit the matter in public, causing it to be read or seen, or showing or delivering the matter with intent that it will be read or seen by any person.⁹⁶⁸ A person who publishes defamatory libel is guilty of an offence with a maximum penalty of 2 years imprisonment or as an offence punishable on summary conviction.⁹⁶⁹ However, a person who publishes defamatory libel in which they know to be false, is guilty of an offence with a maximum penalty of 5 years imprisonment or as an offence punishable on summary conviction.⁹⁷⁰

Under the *Criminal Code*, it is an offence under section 346 to commit extortion. A person who commits extortion with intent to obtain something by threats, menace or violence induces a person to do anything or causes anything to be done, is guilty of an offence.⁹⁷¹ If a restricted or

⁹⁶² Ibid s 264.1(3).

⁹⁶³ Ibid s 265(1).

⁹⁶⁴ Ibid s 265(2).

⁹⁶⁵ Ibid s 266.

⁹⁶⁶ Ibid s 298(1).

⁹⁶⁷ Ibid s 298(2).

⁹⁶⁸ Ibid s 299.

⁹⁶⁹ Ibid s 301.

⁹⁷⁰ Ibid s 300.

⁹⁷¹ Ibid s 346(1).

prohibited firearm is used to commission the offence and the offence is in association with a criminal organisation, they are liable to imprisonment for life and a minimum punishment of 5 years for a first offence, or 7 years in case of a second or subsequent offence.⁹⁷²

Under section 372, it is an offence for a person to convey information by letter or telecommunication that they know is false with the intent to injure or alarm another person.⁹⁷³ Under this section, it is an offence to make indecent communications to a person by means of telecommunication to alarm or annoy them.⁹⁷⁴ It is also an offence to repeatedly communicate with a person by means of telecommunications with an intent to harass them.⁹⁷⁵ These offences can be prosecuted as an indictable offence with a maximum penalty of 2 years imprisonment or as an offence punishable on summary conviction.⁹⁷⁶

Under section 403 of the *Criminal Code*, it is an offence to commit identity fraud. A person who frequently impersonates another person, either living or dead, with an intent to gain advantage for themselves, to gain property or interest in property, to cause a disadvantage to the person being impersonated, or with an intent to avoid arrest or prosecution, or to pervert the course of justice, is guilty of an offence.⁹⁷⁷ Under this section, personating a person means pretending to be the person, such as using their identity information, or using it in combination with identity information pertaining to the person.⁹⁷⁸ Under this section, anyone who commits identity fraud is guilty of an indictable offence with a maximum penalty of 10 years imprisonment or as an offence punishable on summary conviction.⁹⁷⁹

Under section 423 of the *Criminal Code*, it is an offence for a person to use violence, threats of violence, intimidates or attempts to intimidate with threats of violence or injury, persistently follows, or with more than one person follows in a disorderly manner, watches the place where a person resides or works, or hides property owned by the person to deprive or hinder them, for the

⁹⁷² Ibid s 346(1.1).

⁹⁷³ Ibid s 372(1).

⁹⁷⁴ Ibid s 372(2).

⁹⁷⁵ Ibid 372(3).

⁹⁷⁶ Ibid s 372(4).

⁹⁷⁷ Ibid s 403(1).

⁹⁷⁸ Ibid s 403(2).

⁹⁷⁹ Ibid s 403(3).

purpose of compelling the person to abstain from doing anything they have a lawful right to do, or to do anything they have a lawful right to abstain from doing.⁹⁸⁰ A person who commits this offence is guilty of an indictable offence with a maximum penalty of 5 years imprisonment or as an offence punishable on summary conviction.⁹⁸¹

Table 5 Canada's *Criminal Code* laws that apply to cyberbullying

Section	Detail	Penalty	How it can apply to cyberbullying
S 162.1 Publication, etc., of an intimate image without consent	A person who publishes, distributes, sells, or advertises an intimate image of a person without their consent	5 years imprisonment	Cyberbullies who post or distributes intimate images of the victim without their consent
S 163.1 Child pornography	A person who makes, distributes, possesses, or accesses child pornography	14 years imprisonment	Sexting with a child
S 241 Counselling or aiding suicide	A person who counsels, abets, or aid a person to die by suicide	14 years imprisonment	Cyberbullies who tell their victims to kill themselves
S 264 Criminal harassment	A person who engages in conduct that causes another person to fear for their safety or for the safety of others	10 years imprisonment	Cyberbullies who stalk their victims or engages in threatening conduct
S 264.1 Uttering threats	A person who utters, convey, or causes another person to receive a threat to cause death or bodily harm to the person	5 years imprisonment	Cyberbullies who threaten to cause harm to the victim
S 265 Assault	A person who applies force intentionally either directly or indirectly to that person without their consent	5 years imprisonment	Bullies who physically harm the victim

⁹⁸⁰ Ibid s 423(1).

⁹⁸¹ Ibid.

S 298 Defamatory libel	A person who publishes matter that is likely to injure the reputation of a person by exposing them to ridicule, insult, and hatred	2 years imprisonment	Cyberbullies who spread false information about the victim online
S 346 Extortion	A person who commits extortion with intent to obtain something by threats, menace or violence induces a person to do anything or causes anything to be done	5 years imprisonment	Cyberbullies who threaten to post the victims content if the victim does not do what they say
S 372 False information	A person who conveys information by letter or telecommunication that they know is false with the intent to injure or alarm another person	2 years imprisonment	Cyberbullies who spread false information about the victim online
S 403 Identity fraud	A person who frequently impersonates another person, either living or dead, with an intent to gain advantage for themselves	10 years imprisonment	Cyberbullies who pretend to be another person, such as catfishing
S 423 Intimidation	A person who uses violence, threats of violence, intimidates or attempts to intimidate with threats of violence or injury	5 years imprisonment	Cyberbullies who intimidates the victim, by stalking or following

Like Western Australia, Ontario also has a wide range of criminal laws that can cover the scope of bullying and cyberbullying behaviours if the victim wishes to pursue legal action. These laws cover the same offences as Western Australia does, however, the wording of the laws in Ontario is more specific, specifically when it comes to the coverage of cyberbullying, such as the use of the wording communication via ‘telecommunication’ or ‘electronic communication’ compared to

Western Australia's use of 'direct or indirect' communications. Criminal harassment has been found to catch many cyberbullying cases in Canada. Cases involving threats of bodily harm, threats of harassment, and harassment through social media over various platforms have fallen under the scope of criminal harassment.⁹⁸²

While these laws must exist to punish offenders who commit serious acts, they will only aid the victims of bullying and cyberbullying after the harm is done. The focus should be on preventing bullying and cyberbullying behaviours from occurring in the first place. Western Australia should focus on prevention rather than reaction. The focus is on protecting children and young people from bullying and cyberbullying behaviours through preventative methods.

5.3 Other recommendations from the literature

Other lessons that can be drawn from the literature in Chapter 2.6 and 2.7 include: school leadership and climate, policy management, curriculum planning, student voice, student support services, and partnership with parents and local communities.

School leadership and the development of a positive school culture are essential when trying to create an anti-bullying and anti-cyberbullying culture in schools. Western Australia should focus on school wide practices that promote a positive school environment and positive school culture. A strong leadership stance against bullying behaviours set the standard that those types of behaviours are not acceptable. The skills and attitude of the principal and staff members are crucial to how the school will view bullying. There should also be an emphasis of the school's commitment to celebrating inclusivity and diversity.

Western Australia should also focus on creating positive school environments because it increases student reporting of bullying and cyberbullying behaviours. Lessons drawn from the literature as discussed in Chapter 2.6, also suggest that schools should implement an anonymous phone-in line or section on the school's website where students can report cyberbullying without

⁹⁸² Department of Justice, 'Cyberbullying and the Non-consensual Distribution of Intimate Images' *Department of Justice* (Web Page, 19 January 2017) <<https://www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/a3.html>>.

having to talk directly to a staff member. Increased reporting will increase the likelihood that the school can help the victim and reduce bullying. Western Australian schools should also focus on staff training, such as increasing the staff's awareness of bullying, guidance on how to intervene and prevent bullying, as well as what to look out for. The literature in Chapter 2.6 suggests that students are reluctant to report bullying incidences if they feel that staff are unable to do anything about it. Increasing trust in the staff will lead to a more positive school environment.

Lessons for Western Australia regarding policy management is that the policies must be well publicised, enforceable, and implemented consistently. The policy must also clearly define, prohibit, and outline consequences for cyberbullying and other forms of electronic harassment, and not just state intolerance or state having a zero-tolerance policy towards bullying or cyberbullying. The banning of mobile phones is not effective, and hence it may be more effective to restrict usage or implement a separate policy regarding electronic devices. Western Australian school policies should also offer support for victims of bullying and provide a clear procedure for monitoring and evaluating bullying incidences.

Regarding education, Western Australia should consider implementing into their bullying and cyberbullying policies, programs that can improve students' behaviour online, such as through education and awareness of cyber safety, the effects of cyberbullying, and cyber etiquette. In addition to this, Western Australian schools should also consider programs that encourage and teach students how to be empathetic and assertive, e.g., through empathy training and building positive self-esteem. As it is not shown in their policies, the public may be unaware if these programs are being used.

The Bullying Project by the Commissioner for Children and Young People in South Australia included recommendations from young people regarding solutions to bullying. Some of the recommendations include:

- Supporting the development of broad friendships networks across different year levels
- Introduction of programs that are interest based rather than year level or age based
- Introductory 'getting to know you' activities
- Developing social skills and confidence to connect with others

- Developing a positive and open relationship between parents and children
- Teachers should take bullying seriously and not minimise the issue
- Teachers should remain neutral and not take sides
- Teachers should be proactive in responding to bullying, not just wait until bullying is reported by the student
- Creating positive learning environments by developing structured and supervised activities
- Provide supervised 'safe spaces' for students to relax, such as the library or music room during break time
- Holding special events to promote positivity and develop friendships, such as a National Bullying Day, or Feel Good Friday
- Creating an anonymous reporting system
- Setting up chat forums where anonymous students can help others
- More visible involvement of teachers in every area of the school
- Programs that involve teamwork and relationship building
- Programs and strategies should be developed by students for students, as it needs to be relatable and created from their own perspective
- A key person who works with the bully to change their behaviours
- Programs for understanding bystander behaviour⁹⁸³

Western Australia should consider implementing these recommendations in schools as they were made from the perspective of school students. As students are involved with school life, it is important that their voices be heard when developing programs and strategies that will impact their school environment.

5.4 Conclusion

The table below summarises the recommendations and lessons that Western Australia should consider implementing.

⁹⁸³ Government of South Australia, *The Bullying Project* (Report, 2018) 41-50 <<https://www.ccyp.com.au/wp-content/uploads/2022/03/The-Bullying-Project.pdf>>.

Table 6 List of recommendations for WA

Topic	Recommendations for WA
Legislation	<ul style="list-style-type: none"> • Strengthen legislative response to protection of children • Compulsory legislation that requires schools to implement an anti-bullying and anti-cyberbullying policy • Require schools to implement a code of conduct on matters such as respectful, professional, and ethical behaviour of staff, as well as guidance on how the school will address bullying • Define and include bullying and cyberbullying into the Criminal Code • Introduce a bullying or cyberbullying legislation • Seek court protection orders from cyberbullies • Include bullying and cyberbullying prevention into the state curriculum • Implement one overarching and comprehensive policy for all schools in the state for a unified understanding of bullying prevention for all schools • Compulsory legislation for organisations to promote a safe and inclusive learning environment, promote acceptance and respect for others
Policy	<ul style="list-style-type: none"> • Use the national definition of bullying • Implement a positive school culture and adopt whole school approaches when dealing with bullying and cyberbullying • Provide clear expectations of students and staff • Outline and identify the steps that the school will take when preventing bullying • Outline the steps that the school will take when addressing and responding to bullying incidences • Outline how bullying can be reported, such as to staff members or anonymous reporting systems • Outline the consequences of bullying • Outline that the school ensures that the children and young people who are involved with bullying will be safe and supported • States the rights and responsibilities of students, staff and parents • Provide clear procedure of monitoring and evaluating bullying incidences • Must be well publicised, enforceable, and implemented consistently • Do not just state intolerance or state a zero-tolerance policy against bullying or cyberbullying
Positive school culture	<ul style="list-style-type: none"> • Building positive relationships and respectful behaviours

	<ul style="list-style-type: none"> • Building a welcoming culture and positive environments • Creating a welcoming, accepted, inclusive and safe environment for all regardless of race, ancestry, place of origin, ethnic origin, citizenship, creed, sex, sexual orientation, age, family status, disability, or other factors • Implementing Bullying Awareness and Prevention Week • Hold events to promote positivity and develop friendships
Education programs	<ul style="list-style-type: none"> • Implement evidence-based programs such as the PEACE pack program and the Friendly Schools program • Implement programs that support and promote gender equity, anti-racism, understanding and respect for people with disabilities and people of all sexual orientations and gender identities • Programs that can improve students' behaviours online, awareness on cyber safety, the effects of cyberbullying, and cyber etiquette • Programs that encourage and teach students how to be empathetic, assertive, and confident • Programs to develop social skills • Introduction of interest-based programs to support the development of broad friendships networks across different year levels • Programs that involve teamwork and relationship building
Leadership and staff	<ul style="list-style-type: none"> • Professional development to educate school staff about bullying prevention and strategies for promoting positive school climates • Supports the need for school staff and educators to be skilled and confident when addressing bullying at school • Includes access for school staff to training and resources that teach them how to recognise bullying, how to effectively respond to bullying and cyberbullying, how to teach students about bullying and cyberbullying, and online safety • School staff will have access to professional development to work effectively with parents, and responding to their concerns about bullying
Parents	<ul style="list-style-type: none"> • Clear guidelines on parent's rights at school level and at state level

CHAPTER SIX

Conclusion

This research has explored the objective as stated in Chapter 1, whether there is a need for a legislative response in Western Australia similar to the ones enacted in South Australia and Ontario Canada, which require schools to implement bullying and cyberbullying policies, which include the rights and responsibilities for all teachers, principals, school boards to prevent and address bullying in schools, as well as encouraging a positive and inclusive school experience. Two research questions have been answered.

The first research question was whether Western Australian public high schools openly display policies pertaining to cyberbullying in comparison to South Australian public high schools. The research examined all public high schools in the metropolitan area in Western Australia and South Australia and extracted the school bullying policies from the schools' websites. These policies were analysed by determining whether they had any of the 16 categories (See Appendix 3), that according to the literature in Chapter 2.6, should be included in a school's bullying policy to be effective at reducing bullying and cyberbullying behaviours.

A comparison between Western Australia and South Australian public schools was undertaken to determine whether there was a difference in their policies and what they openly displayed. The results of this research showed that Western Australia does not openly display their bullying and cyberbullying policies to the same standard or extent when compared to South Australia. The obvious reason why South Australian public high schools had openly displayed their policies compared to Western Australia public high schools, is because South Australia has legislative compulsion which requires schools to provide policies and guidelines for the protection of children and young people against bullying and cyberbullying. Western Australia has no such legislation, leaving it to the schools to implement such policies. This led to the second research question.

The second research question was to determine what lessons can be drawn for Western Australia from South Australia and Ontario Canada with respect to the legislation pertaining to

cyberbullying policy in high schools. The answer to this research question has been explored in Chapter 5.

Laws regarding cyberbullying seem to be brought about only after the death of a young person in their state or province, as seen with Rehtaeh Parson from Nova Scotia, Canada, and Libby Bell from South Australia. Western Australia should look at enacting legislation that requires high schools to implement bullying policies that include a clear definition of bullying and cyberbullying, and list the rights and responsibilities of the students, staff, parents and wider community. This legislation should also require schools to establish strategies for intervention and prevention of bullying and cyberbullying in the school yard, such as anti-bullying programs or programs that teach students how to be respectful, and teach them about empathy, inclusivity and acceptance. In these policies, there should be clear procedures for reporting as well as listing the consequences for bullying behaviours. Most importantly, there should be legislation that requires schools to promote safe and positive environments for children. It is not sufficient for policy issues to only be listed for consideration under the Western Australian Department of Education. There needs to be legislative compulsion requiring Western Australian high schools to actually implement and adopt these anti-cyberbullying policies.

Following South Australia and Nova Scotia, Western Australia should also be open to considering a bullying and cyberbullying legislation. This type of legislation was only considered because of the tragic deaths of Libby Bell from South Australia, and Rehtaeh Parson in Nova Scotia, due to the bullying and cyberbullying they endured. Western Australia should not wait until there is a death of a young person in the state for there to be a push for legislative change. The introduction of a bullying and cyberbullying bill in Western Australia would be the first in Australia. While it can be argued that Western Australia's current criminal and civil laws cover the scope for any potential bullying and cyberbullying cases, and the role of the eSafety Commissioner aids in the removal of harmful content posted online, these are reactionary procedures. The Commonwealth's *Criminal Code* provisions are also only reactionary. While the implementation of a bullying and cyberbullying legislation is also considered reactionary, with the growing number of cases of cyberbullying being reported, cyberbullying legislation should be considered.

The most important aspect for Western Australia to consider is the implementation of an *Education Act* similar to Ontario, Canada. The *Education Act* in Ontario portrays the awareness of the harm that can be caused by cyberbullying in schools. Sections under this Act also show that Ontario has an awareness of the importance of bullying prevention, and in creating a culture within the schools that promote respect, safety, inclusivity and acceptance of others, as well as strategies for intervention and prevention. The inclusion of a Bullying Awareness and Prevention Week within the *Education Act* also demonstrates the importance of promoting safe schools and positive learning environments. In Ontario, the legislators of the *Education Act* believe that promoting and creating a positive school environment, is the key to reducing bullying within schools. Although there are no definitive characteristics that make a person susceptible to cyberbullying, there are, however, factors which cause a person to more likely be a victim, such as their ethnicity, physical appearance, how they dress, level of intellect, or socio economic status (See Chapter 2). This susceptibility has been minimised under the *Education Act* with the need to create a positive school climate that is safe, inclusive and accepting of all people, regardless of their ethnicity, race, ancestry, place of origin, ethnic origin, citizenship, creed, sex, sexual orientation, age, family status, or disability. Education on these issues in schools play an important role in shaping young people, in which they can be taught acceptance and respect for others. By promoting acceptance, inclusivity, and respect in a positive school environment, it can prevent bullying behaviours in schools.

The problem identified in this research is the lack of compulsion in public high schools in Western Australia to establish policies and guidelines that would actively promote and educate their students on anti-cyberbullying culture. This could be because there is no legislation in Western Australia which mandates these bullying prevention strategies, and hence the cyberbullying culture may continue to be a major problem within high schools in Western Australia. It may be appropriate for Western Australia to implement state legislation like in South Australia and Canada, where bullying and cyberbullying prevention policies should be mandatory in all schools. Both the South Australian and Canadian approach to bullying prevention is by bringing a culture of awareness to the issue of cyberbullying within schools.

Western Australia should follow the examples set by both South Australia and Ontario, Canada by incorporating these elements into their own legislation.

Limitation

A limitation of this research was that the data was limited to Western Australia and South Australia public high school bullying policies in the metropolitan area. A limitation to the research was that the data was only limited to the policies that were made publicly available on the schools' websites. Another limitation is that the recommendations are drawn from South Australia state implemented bullying prevention initiatives and Ontario Canada's *Education Act*.

Further research

Further research could explore whether derogatory statements made by high school children are defamation or cyberbullying, or both. There is also very little research conducted on the rights of parents and guardians of children who have been cyberbullied and of children who have cyberbullied. Further research in Western Australia and South Australia could explore whether the policies that the schools implement do actually make a difference in reducing cyberbullying in schools. Further research could also be conducted to determine whether schools have other bullying and cyberbullying responses that are not made publicly available on the schools' websites. Approval is required from the Department of Education before researchers can talk to the schools directly. Victoria's approach and legislation on bullying is also another possible avenue to research in comparison to Western Australia and South Australia.

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Appendix 1 – List of Public high schools in Western Australia with bullying policy

Name of School	URL	Date policy was extracted
Applecross Senior High School	https://applecross.wa.edu.au/wp-content/uploads/2020/11/Bullying-Policy.pdf	6/9/2021
Armada Senior High School	http://ashs.wa.edu.au/wp-content/uploads/2020/05/School-Positive-Behaviour-Policy.pdf	6/9/2021
Ashdale Secondary College	https://ashdalesc.wa.edu.au/wp-content/uploads/2020/02/ASC-Preventing-and-Managing-Bullying.pdf	6/9/2021
Atwell College	https://www.atwellcollege.wa.edu.au/view/policies/bullying-policy	6/9/2021
Ballajura Community College	https://www.bcc.wa.edu.au/wp-content/uploads/2017/05/Bullying-Intimidation-Policy.pdf	6/9/2021
Belmont City College	https://www.belmontcc.wa.edu.au/wp-content/uploads/2020/03/Belmont-City-College-Positive-Behaviour-Policy.pdf	6/9/2021
Bullsbrook College	http://bullsbrook-college.wa.edu.au/policies/emotional-well-being/	6/9/2021
Butler College	https://butlerc.schoolzineplus.com/_file/media/946/2022_positive_behaviour_support_plan.pdf	7/9/2021
Byford Secondary College	https://byfordsc.wa.edu.au/wp-content/uploads/2019/05/2017-Preventing-and-Managing-Bullying-Byford-Secondary-College-Guidelines.pdf	7/9/2021

Canning Vale College	https://cvc.wa.edu.au/wp-content/uploads/2021/02/Canning-Vale-College-PPR-Bullying-Guidelines.pdf	7/9/2021
Carine Senior High School	https://www.carinehs.wa.edu.au/wp-content/uploads/2020/07/Anti-Bullying-Policy-2015.pdf	7/9/2021
Cecil Andrews College	https://cecilandrewscollege.wa.edu.au/wp-content/uploads/2021/01/Bullying-Policy-Overview-CAC.pdf	7/9/2021
Clarkson Community High School	https://www.clarksonchs.wa.edu.au/index.php/docman-home/enrolments/whole-school-policies/200-cchs-positive-behaviour-support-plan-good-standing-policy	7/9/2021
Coodanup College	https://www.coodanup.wa.edu.au/wp-content/uploads/2022/02/6315_Anti-Bullying-Brochure_v11.pdf	7/9/2021
Darling Range Sports College	http://darlingrangesc.wa.edu.au/wp-content/uploads/2019/12/Anti-Bullying-Policy.pdf	7/9/2021
Duncraig Senior High School	https://www.duncraigshs.wa.edu.au/sites/default/files/Bullying%20Policy%202021.pdf	7/9/2021
Fremantle College	https://fremantlecollege.wa.edu.au/about-us/key-policies/fremantle-college-wellbeing-policy-2018/	7/9/2021
Girrawheen Senior High School	https://www.girrawheenshs.wa.edu.au/wp-content/uploads/2022/01/Stand-Tall-Anti-Bullying-Policy.pdf	7/9/2021
Greenwood College	https://static1.squarespace.com/static/5facf2237c80332018edb3f3/t/60c04f3cb905e00ba9dc4c7e/1623215937923/Greenwood+College+All+School+Policy.pdf	8/9/2021
Joseph Banks Secondary College	https://jbcs.wa.edu.au/wp-content/uploads/2021/05/Respectful-Relationship-Anti-Bullying-Policy-V2.pdf	8/9/2021

Kelmscott Senior High School	https://www.kshs.wa.edu.au/wp-content/uploads/2020/06/Bullying-Harrassment-Policy.pdf	8/9/2021
Kent Street Senior High School	https://www.kentstreetshs.wa.edu.au/policies	8/9/2021
Lesmurdie Senior High School	https://www.lesmurdie.wa.edu.au/wp-content/uploads/2021/11/Positive-Behaviour-Management-2022.pdf	8/9/2021
Lynwood Senior High School	https://www.lynwood.wa.edu.au/wp-content/uploads/2021/04/Lynwood-SHS-Behaviour-Policy-2021.pdf	8/9/2021
Melville Senior High School	https://www.melville.wa.edu.au/wp-content/uploads/2021/08/Student-Engagement-Policy-2021.pdf	8/9/2021
Mount Lawley Senior High School	https://www.lawley.wa.edu.au/view/policies/policy-behaviour	8/9/2021
Rockingham Senior High School	https://rockingham.wa.edu.au/wp-content/uploads/2016/03/Bullying.pdf	9/9/2021
Rossmoyne Senior High School	https://www.rossmoyne.wa.edu.au/about-us/policies/anti-bullying-policy/	9/9/2021
Safety Bay Senior High School	https://safetybay.wa.edu.au/wp-content/uploads/2019/03/Bullying-Prevention-Strategy-FINAL.pdf	9/9/2021
School of Isolate and Distance Education	https://docs.google.com/viewerng/viewer?url=https://erol.side.wa.edu.au//content/file/c2098d65-affb-4404-af75-7d247b0aad6b/1/Student_Code_Conduct.pdf	9/9/2021

Thornlie Senior High School	http://www.thornlieshs.wa.edu.au/wp-content/uploads/2020/08/Bullying-Policy.pdf	9/9/2021
Warwick Senior High School	https://www.warwickshs.wa.edu.au/our-school/policies/student-behaviour/	9/9/2021
Yanchep Secondary College	https://www.yanchepsc.wa.edu.au/wp-content/uploads/2021/06/Preventing-and-Managing-Bullying-at-YSC.pdf	9/9/2021

Appendix 2 – List of Public high schools in South Australia with bullying policy

Name of School	URL	Date policy was extracted
Aberfoyle Park High School	http://intra.aphs.sa.edu.au/web/sites/default/files/Bullying%20%20Harassment%20Policy.pdf	11/9/2021
Adelaide High School	https://adelaidehs.sa.edu.au/about/documents/policies	11/9/2021
Adelaide Secondary School of English	https://www.adsecenglish.sa.edu.au/	11/9/2021
Banksia Park International High School	http://bpihs.sa.edu.au/wp-content/uploads/2014/12/Anti-Bullying-and-Harassment-Policy.pdf	12/9/2021
Birdwood High School	https://www.birdwoodhs.sa.edu.au/information/bullying-harassment/	12/9/2021
Blackwood High School	https://www.bhs.sa.edu.au/wp-content/uploads/2022/07/Under-Review-V2-2020-Harassment-and-Bullying-Policy.pdf	12/9/2021
Brighton Secondary School	https://www.brightonss.sa.edu.au/wp-content/uploads/2018/05/BSS-Anti-Bullying-Anti-Harassment-Policy-2018-.pdf	12/9/2021
Charles Campbell College	http://www.ccc.sa.edu.au/uploads/7/4/5/0/74507007/2014_antibullying_policy.pdf	12/9/2021
Christies Beach High School	https://www.cbhs.sa.edu.au/wp-content/uploads/2019/10/CBHS-Anti-Bullying-and-Harassment-Policy.pdf	12/9/2021

Craigmore High School	https://craigmorehs.sa.edu.au/documents/policies/	12/9/2021
Eastern Fleurieu R-12 School	https://easternfleurieu.sa.edu.au/policies	12/9/2021
Gawler & District College B-12	https://www.gdc.sa.edu.au/downloads/2021-01-19_055206_Anti-Bullying%20and%20Harassment%20Policy%202021.pdf	12/9/2021
Golden Grove High School	https://www.goldengrovehs.sa.edu.au/images/PDFS/Bullying_and_Harassment_Policy.pdf	12/9/2021
Hallett Cove School R-12	https://hcs.sa.edu.au/policy-and-documents-current/	12/9/2021
Hamilton Secondary College	https://www.hamcoll.sa.edu.au/wp-content/uploads/Bullying-and-Harassment-Policy-2017-WEB.pdf	12/9/2021
Heathfield High School	https://heathfieldhs.schoolzineplus.com/_file/media/13/antibullyingandharassmentpolicy.pdf	12/9/2021
Henley High School	http://www.henleyhs.sa.edu.au/Media/Default/Documents/Bullying%20Harassment%20Policy%20HHS%202018.pdf	12/9/2021
Kapunda High School	https://kapundahs.sa.edu.au/policies-procedures	13/9/2021
Le Fevre High School	https://www.lefevrehs.sa.edu.au/wp-content/uploads/2019/05/Anti-Harassment-and-Anti-Bullying-Policy.pdf	13/9/2021
Marryatville High School	http://www.marryatvillehs.sa.edu.au/_r5993/media/system/attrib/file/1059/Marryatville%20High%20School%20Student%20Expectations%20and%20Policies%202020.pdf	13/9/2021
Mitcham Girls High School	https://www.education.sa.gov.au/bullying-prevention-policies-and-plans/mitcham-girls-high-school	13/9/2021
Modbury High School	https://www.modburyhs.sa.edu.au/our-school/policies	13/9/2021

Mount Barker High School	https://www.mtbhs.sa.edu.au/about/policies_and_documents	13/9/2021
Mount Compass Area School	http://compassas.sa.edu.au/wp/wp-content/uploads/2019/01/bullyingpolicy.pdf	13/9/2021
Murray Bridge High School	https://www.education.sa.gov.au/bullying-prevention-policies-and-plans/murray-bridge-high-school-2020	13/9/2021
Norwood Morialta High School	https://www.nihs.sa.edu.au/_files/ugd/85e0b6_fc4f193fbfe64bdf90fb4bb4dda33a56.pdf	13/9/2021
Oakbank Area School	http://www.oakbankas.sa.edu.au/wp-content/uploads/2016/08/News_-_Information_RHS_Current-Reports_-_Policies_OAS-Anti-bullying-Policy-2016-1.pdf	14/9/2021
Para Hills High School	https://phhs.schoolzineplus.com/_file/media/1064/bullying_harassment.pdf	14/9/2021
Parafield Gardens High School	https://www.pghs.sa.edu.au/resources/PGHS/dataManagerFiles/378619754.pdf	14/9/2021
Playford International College	https://playford.b-cdn.net/wp-content/uploads/2021/01/Bullying-and-Harassment-Procedure-2020-06.pdf	14/9/2021
Plympton International College	https://www.education.sa.gov.au/bullying-prevention-policies-and-plans/plympton-international-college	14/9/2021
Riverton and District High School	https://rdhs.sa.edu.au/wp-content/uploads/2020/11/Antibullying_policy.pdf	14/9/2021
Roma Mitchell Secondary College	https://rmsc.sa.edu.au/wp-content/uploads/BULLYING-HARASSMENT.pdf	14/9/2021

Salisbury East High School	https://sehs.sa.edu.au/school-policies/bullying-and-harassment/	14/9/2021
Salisbury High School	http://www1.salisburyhigh.sa.edu.au/images/pdf/BULLYING_POLICY.pdf	14/9/2021
Seaford Secondary College	https://www.seafordhs.sa.edu.au/wp-content/uploads/2021/11/Anti-Bullying_and_Harassment_Policy_V1_3.pdf	14/9/2021
Seaton Secondary College	https://www.seatonhs.sa.edu.au/OurSchool-KeySchoolDocuments	14/9/2021
The Heights School	https://www.theheights.sa.edu.au/wp-content/uploads/2020/11/bullyingpolicy-2020-update.pdf	15/9/2021
Underdale High School	https://www.underdale.sa.edu.au/wp-content/uploads/2021/06/UHS-Bullying-Prevention-Policy.pdf	15/9/2021
Unley High School	https://uhs.sa.edu.au/wp-content/uploads/2021/11/Bullying-Prevention-Policy.pdf	15/9/2021
Urrbrae Agricultural High School	https://www.urrbraehs.sa.edu.au/wp-content/uploads/2020/11/Anti-Bullying-2020-s.pdf	15/9/2021
Valley View Secondary School	https://www.valleyview.sa.edu.au/wp-content/uploads/2022/04/VVSS-Behaviour-Support-Policy.pdf	15/9/2021
Victor Harbour High School	https://static1.squarespace.com/static/53686b4ae4b0e77173cd2f60/t/60d3cd2c1b2124212bb20012/1624493357096/580-A-01+Bullying+Prevention+Policy+and+Plan+GC+approved.pdf	15/9/2021
Willunga High School	https://www.whs.sa.edu.au/wp-content/uploads/2020/12/Anti-Bullying-Harassment-Policy.pdf	15/9/2021

Wirreanda Secondary School	https://wirreandasecondary.sa.edu.au/wp-content/uploads/2021/05/Anti-bullying-and-Harassment.pdf	15/9/2021
Woodville High School	https://woodvillehigh.sa.edu.au/uploads/6/8/6/3/6863387/coming_to_school_with_bullying_and_harassment_2020.pdf	15/9/2021

Appendix 3 – 16 Categories for policy analysis

1. Whether the school had a policy on their school's website regarding bullying, such as an anti-harassment policy, anti-bullying policy etc
2. Whether the policy had defined 'bullying' in the policy
3. Whether the policy included or used the national definition of bullying when defining bullying
4. Whether the policy described what bullying is, what it is not, what bullying involves, the types of bullying, examples of bullying (separate to the definition of bullying)
5. Whether the policy included strategies for intervention of bullying, such as monitoring or preventative strategies listed
6. Whether the policy had listed the rights and responsibilities of students, staff and parents
7. Whether the policy mentioned providing support to the victim or anyone else involved in the bullying
8. Whether the policy mentioned providing counselling for the victim or anyone else involved in the bullying
9. Whether the policy mentioned providing mediation for the victim and bully
10. Whether the policy mentioned providing support, counselling, and mediation
11. Whether the policy mentioned cyberbullying at all
12. Whether the policy mentioned cyberbullying as a separate issue to bullying (e.g., not grouped under the definition of bullying, but as a separate topic)
13. Whether the policy had included or mentioned a whole school approach to preventing bullying, positive school environment or positive school culture
14. Whether the policy mentioned providing education on bullying into the curriculum
15. Whether the policy mentioned procedures for reporting, staged process on what students should do, what they should expect of the process
16. Whether the policy mentioned consequences for the bullying behaviour, such as detention, suspension, or expulsion

Appendix 4 – Western Australian School Policy Analysis and Notes

Name	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Applecross Senior High School	Y	Y	Y	Y	Y	Y	Y	S	N	N	Y	Y	Y	Preventing and Managing Bullying Policy
Armadale Senior High School	Y	Y	Y	Y	N	N	Y	S	N	Y	N	Y	Y	Positive Behaviour Policy
Ashdale Secondary College	Y	Y	N	N	N	Y	Y	N	N	N	N	N	Y	Preventing and Managing Bullying
Atwell College	Y	Y	N	Y	N	Y	Y	N	Y	N	N	Y	Y	Bullying Policy
Ballajura Community College	Y	Y	Y	N	N	Y	Y	S	N	N	N	Y	Y	Bullying and Intimidation Policy
Belmont City College	Y	Y	N	N	N	N	Y	S	N	Y	N	Y	Y	Behaviour Management Policy
Bullsbrook College	Y	Y	Y	N	Y	N	Y	M/C/S	N	N	N	Y	Y	Managing Anti Social or Bullying Behaviour
Butler College	Y	Y	Y	Y	N	Y	Y	S	N	Y	N	Y	Y	Positive Behaviour Support Plan
Byford Secondary College	Y	Y	Y	Y	N	Y	Y	C/S	N	N	N	Y	Y	Preventing and Managing Bullying
Canning Vale College	Y	Y	Y	N	N	Y	Y	S	N	N	N	Y	Y	Bullying Policy
Carine Senior High School	Y	Y	Y	Y	N	Y	Y	C/S	N	N	N	Y	Y	Anti-Bullying Policy
Cecil Andrews College	Y	Y	Y	Y	N	Y	N	C/S	Y	Y	N	Y	N	Harassment and Bullying Policy
Clarkson Community High School	Y	Y	Y	N	N	N	Y	M/S	N	Y	N	Y	N	Positive Behaviour Support Plan
Coodanup College	Y	Y	N	N	N	Y	Y	S	N	N	N	Y	N	Bullying Policy
Darling Range Sports College	Y	Y	Y	Y	N	Y	Y	M/S	N	Y	N	Y	Y	Antibullying Policy
Duncraig Senior High School	Y	Y	Y	Y	N	Y	Y	M/S	Y	N	N	Y	N	Anti-Bullying and Harassment Plan
Fremantle College	Y	Y	Y	N	N	Y	Y	S	Y	N	N	Y	N	Wellbeing Policy
Girrawheen Senior High School	Y	Y	Y	Y	N	Y	Y	M/C/S	Y	N	N	N	Y	Bullying Policy/Counter Bullying Policy
Greenwood College	Y	Y	N	N	Y	N	N	M/C	Y	N	N	N	Y	All School Policy (sub heading bullying)
Joseph Banks Secondary College	Y	Y	Y	Y	N	Y	Y	S	N	N	N	Y	Y	Respectful Relationships (Antibullying)Policy
Kelmscott Senior High School	Y	Y	Y	Y	N	Y	Y	M/C/S	Y	Y	N	Y	Y	Bullying and Harassment Policy
Kent Street Senior High School	Y	Y	N	N	N	Y	N	N	Y	N	N	N	N	Countering Bullying Policy
Lesmurdie Senior High School	Y	Y	N	N	N	Y	Y	S	Y	N	N	N	N	Positive Behaviour Management Policy
Lynwood Senior High School	Y	Y	Y	N	N	N	Y	S	Y	Y	N	N	Y	Whole School Positive Behaviour Support Plan
Melville Senior High School	Y	Y	Y	Y	N	N	Y	C	Y	N	N	Y	N	Student Engagement Policy
Mount Lawley Senior High School	Y	Y	Y	N	N	Y	Y	S	Y	Y	N	Y	N	Student Positive Behaviour Policy
Rockingham Senior High School	Y	Y	Y	Y	N	N	Y	C	N	Y	N	Y	N	Bullying Policy
Rossmoyne Senior High School	Y	Y	N	Y	N	Y	Y	N	N	N	N	Y	Y	Anti-Bullying Policy
Safety Bay Senior High School	Y	Y	Y	Y	N	Y	Y	S	N	N	Y	Y	Y	Bullying Prevention Strategy
School of Isolate and Distance Education	Y	Y	Y	N	N	Y	Y	N	Y	N	N	N	N	Student Code of Conduct
Thornlie Senior High School	Y	Y	N	Y	N	Y	Y	S	N	Y	N	Y	Y	Countering Bullying Policy
Warwick Senior High School	Y	N	Y	N	N	N	Y	S	N	N	N	N	N	Bullying Prevention Policy
Yanchep Secondary College	Y	Y	Y	N	N	Y	Y	S	N	Y	N	Y	Y	Preventing and Managing Bullying

The key is found in Appendix 6

Appendix 5 – South Australian School Policy Analysis and Notes

Name	A	B	C	D	E	F	G	H	I	J	K	L	M	N
Aberfoyle Park High School	Y	Y	N	N	N	Y	N	C/S	Y	Y	N	N	Y	Bullying and Harassment Policy
Adelaide High School	Y	Y	N	N	N	N	Y	S	N	N	N	N	N	Behaviour Support Policy
Adelaide Secondary School of English	Y	Y	N	N	N	Y	N	C	Y	N	N	N	Y	Bullying and Harassment Grievance Procedure
Banksia Park International High School	Y	Y	Y	Y	Y	N	Y	S	Y	Y	N	Y	Y	Anti-Bullying/Harassment Policy
Birdwood High School	Y	Y	Y	N	Y	Y	N	N	Y	N	N	N	Y	Bullying and Harassment
Blackwood High School	Y	Y	Y	Y	N	Y	Y	C/S	Y	Y	N	Y	Y	Harassment and Bullying Policy
Brighton Secondary School	Y	Y	Y	Y	N	Y	Y	C/S	Y	Y	N	Y	Y	Anti Bullying Anti Harassment Policy
Charles Campbell College	Y	Y	Y	Y	Y	Y	Y	C/S	Y	Y	N	Y	Y	Anti-Bullying and Harassment Policy
Christies Beach High School	Y	Y	Y	N	N	Y	Y	C/S	Y	N	N	Y	Y	Anti-Bullying and Harassment Policy
Craigmore High School	Y	Y	Y	Y	Y	Y	Y	M/C/S	Y	Y	Y	Y	Y	Anti-Bullying and Harassment Policy
Eastern Fleurieu R-12 School	Y	Y	Y	N	N	Y	Y	C	N	Y	N	Y	N	Anti Harassment and Bullying Policy
Gawler & District College B-12	Y	Y	Y	Y	N	Y	Y	M/C	N	Y	N	Y	Y	Anti-Bullying and Harassment Policy
Golden Grove High School	Y	Y	Y	N	Y	Y	Y	C/S	Y	Y	N	N	Y	Student Bullying and Harassment Policy
Hallett Cove School R-12	Y	Y	N	N	N	Y	N	N	N	N	N	N	Y	Harassment and Bullying
Hamilton Secondary College	Y	Y	Y	Y	Y	Y	Y	C/S	Y	Y	N	Y	Y	Bullying and Harassment Policy
Heathfield High School	Y	Y	Y	Y	N	Y	Y	C/S	Y	Y	N	Y	Y	Anti-Bullying and Harassment Policy
Henley High School	Y	Y	N	Y	Y	Y	N	C/S	Y	Y	N	Y	Y	Bullying and Harassment Policy
Kapunda High School	Y	Y	Y	Y	N	Y	Y	C/S	Y	Y	N	Y	Y	Anti Bullying Policy
Le Fevre High School	Y	Y	Y	N	Y	Y	Y	C/S	Y	Y	N	Y	Y	Anti Harassment and Anti Bullying Policy
Marryatville High School	Y	Y	N	Y	N	Y	Y	S	Y	Y	N	N	N	Harassment Policy (under Student Expectations Policy)
Mitcham Girls High School	Y	Y	Y	Y	Y	Y	Y	C/S	Y	Y	Y	Y	Y	Bully, Prevention Policy and Plan
Modbury High School	Y	Y	Y	N	N	Y	Y	M/C/S	Y	Y	N	Y	Y	Bullying and Harassment Policy
Mount Barker High School	Y	Y	N	Y	N	Y	Y	C	Y	Y	N	Y	Y	Bullying and Harassment Policy and Procedures
Mount Compass Area School	Y	Y	Y	N	N	Y	N	C/S	Y	Y	N	Y	Y	Anti Bullying Policy
Murray Bridge High School	Y	Y	Y	Y	Y	Y	Y	C/S	Y	Y	Y	Y	Y	Bully, Prevention Policy and Plan
Norwood Morialta High School	Y	Y	N	Y	Y	N	Y	C	Y	Y	N	N	Y	Anti Harassment and Bullying Policy
Oakbank Area School	Y	Y	Y	Y	Y	Y	Y	C	Y	Y	N	Y	Y	Anti Bullying Policy
Para Hills High School	Y	Y	Y	Y	N	Y	Y	M/C/S	Y	Y	N	Y	Y	Anti Bullying Policy
Parafield Gardens High School	Y	Y	N	N	Y	Y	N	C	Y	Y	N	N	Y	Anti Bullying Brochure
Playford International College	Y	Y	N	N	N	Y	Y	N	Y	N	N	N	N	Bullying and Harassment Policy
Plympton International College	Y	Y	Y	Y	Y	Y	Y	C/S	Y	Y	Y	Y	Y	Bully, Prevention Policy and Plan
Riverton and District High School	Y	Y	Y	N	N	Y	Y	C/S	Y	Y	N	Y	N	Anti Bullying Policy
Roma Mitchell Secondary College	Y	Y	N	Y	Y	Y	Y	M/C/S	Y	Y	N	Y	Y	Bullying and Harassment Policy
Salisbury East High School	Y	Y	N	N	N	N	Y	S	Y	Y	N	N	Y	Bullying and Harassment Policy
Salisbury High School	Y	Y	N	Y	Y	N	Y	S	N	N	N	Y	Y	Bullying and Harassment Policy
Seaford Secondary College	Y	Y	Y	N	Y	Y	Y	C/S	Y	Y	N	Y	Y	Anti-Bullying and Harassment Policy
Seaton Secondary College	Y	Y	N	N	N	Y	N	C	Y	Y	N	N	N	Harassment Policy
The Heights School	Y	Y	Y	N	Y	Y	Y	M/C/S	Y	Y	N	Y	Y	Anti Bullying Policy
Underdale High School	Y	Y	Y	Y	Y	Y	Y	C/S	Y	Y	Y	Y	Y	Bully Prevention Policy
Unley High School	Y	Y	N	Y	N	Y	N	M/C	Y	Y	N	N	Y	Harassment and Bullying Policy
Urrbrae Agricultural High School	Y	Y	N	Y	Y	N	Y	M/C	Y	Y	N	N	Y	Anti Bullying Policy
Valley View Secondary School	Y	Y	Y	Y	Y	N	Y	M/C/S	Y	Y	Y	Y	Y	Bullying and Harassment Policy
Victor Harbour High School	Y	Y	Y	Y	Y	Y	Y	C/S	Y	Y	Y	Y	Y	Bully, Prevention Policy and Plan
Willunga High School	Y	Y	N	N	N	Y	Y	C/S	Y	N	N	N	Y	Anti-Bullying and Harassment Policy
Wirreanda Secondary School	Y	Y	Y	N	N	Y	Y	C/S	Y	Y	N	Y	Y	Anti-Bullying and Harassment Policy
Woodville High School	Y	Y	Y	Y	Y	N	Y	M/C/S	Y	Y	N	Y	Y	Policy and Procedures for Countering Bullying and Harassment

Key is found in Appendix 6

Appendix 6 – Key for Appendix 4 and 5

- A. Whether school website had a policy
- B. Whether the policy had a definition of bullying
- C. Whether the policy listed strategies or interventions for bullying
- D. Whether policy listed the rights and responsibilities of students, staff and parents
- E. Whether policy had a definition of cyberbullying separate to bullying
- F. Whether bullying was further explained (what it is, what it is not, examples of bullying)
- G. Whether policy mentioned positive school culture or whole school approach to bullying
- H. Whether policy included mediation, counselling, or support services
- I. Whether policy included procedure for reporting, staged process
- J. Whether policy included consequences for bullying behaviours
- K. Whether policy used the national definition of bullying
- L. Whether policy included education programs to prevent or bring awareness to bullying
- M. Whether policy explained cyberbullying (what it is, examples of cyberbullying)
- N. Name of the policy

Y value means YES the policy includes this category

N value means NO the policy does not include this category

M means the policy includes MEDIATION

C means the policy includes COUNSELLING

S means the policy includes SUPPORT

Appendix 7 – Results from all metropolitan Western Australia and South Australian Public High School Policies

These are the results from all public high schools in the metropolitan area in Western Australia and South Australia.

Percentages arrived by totalling the Y values from Appendix 4 and 5

Total sample	Have a policy on their website regarding bullying	Definition of bullying	Strategies for intervention	Listed rights and responsibilities	Mentioned CB as a separate issue to bullying	Described what bullying is, what it isn't, what it involves
WA 65	51%	49%	37%	26%	5%	37%
SA 52	88%	88%	56%	52%	44%	73%

Mentioned a positive school environment/ culture/whole school approach to bullying	Provides support for victims/anyone involved with the bullying	Provide counselling for victims/ anyone involved with the bullying	Provide mediation	Mentioned providing support, counselling and mediation
46%	38%	14%	12%	5%
71%	63%	73%	19%	13%

Mentioned procedures, staged process on what students should do if bullying occurs	Consequences for bullying behaviour (suspension or expulsion)	Used national definition of bullying	Education/adding bullying prevention/info to the school curriculum	Mentioned cyberbullying
20%	18%	3%	38%	32%
79%	73%	13%	60%	77%

Appendix 8 – Results from Western Australia and South Australian public schools that had a policy displayed

These are the results from the schools that had a policy available on their website.

Percentages arrived by totalling the Y values from Appendix 4 and 5

Total sample	Definition of bullying	Strategies for intervention	Listed rights and responsibilities	Mentioned CB as a separate issue to bullying	Described what bullying is, what it isn't, what it involves
WA 33	97%	73%	52%	9%	73%
SA 46	100%	63%	59%	50%	83%

Mentioned a positive school environment/ culture/whole school approach to bullying	Provides support for victims/anyone involved with the bullying	Provide counselling for victims/ anyone involved with the bullying	Provide mediation	mentioned providing support, counselling, and mediation
91%	76%	27%	24%	9%
80%	72%	83%	22%	15%

Mentioned procedures, staged process on what students should do if bullying occurs	Consequences for bullying behaviour (suspension or expulsion)	Used national definition of bullying	Education/adding bullying prevention/info to the school curriculum	Mentioned cyberbullying
39%	36%	6%	76%	64%
89%	83%	15%	67%	87%