ONLINE BULLYING AND HARASSMENT: AN AUSTRALIAN PERSPECTIVE

by

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Information and Communication Technology (ICT) has created new ways for children to harass and bully each other. It is unfathomable and somewhat ironic to see how the phenomenon of cyberbullying has affected our society and indeed most disturbing to hear cases of teenagers committing suicide or being severely emotionally scarred through the misuse of the latest communication tools that were designed to improve the quality of our lives. Unfortunately the ICT's very nature of being always-on, accessible-from-anywhere, and often anonymous means of communication makes it difficult to regulate what children say or do to each other. This paper attempts to examine online bullying and harassment- also known as cyberbullying- within the Australian context. Essentially, it discusses the various issues associated with cyberbullying including definition and characteristics of cyberbullying; laws that may be applicable to such forms of harassment; consequences of an anonymous bullying act; and whether intermediaries can be held responsible for cyberbullying. The article concludes by providing a few recommendations on how to address cyberbullying.

KEYWORDS

cyberbullying, children, internet, mobile phones, anonymity, internet service providers

1. INTRODUCTION

Cyberbullying is becoming an increasingly rampant social problem around the world as the use of technology is rising, particularly among young chil-

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dren. Only recently Australia observed its first landmark prosecution case of a cyberbullying offence.[1] During the court hearing, Shane Philip Gerada admitted to sending his best friend, Allem Halkic, vicious and threatening SMS's and MySpace messages after he found out that Halkic was seeing someone else's girlfriend.[2] In the 24 hours before Halkic's death Gerada badgered Halkic with five text messages. "Ur all mouth and no action, wait till I get my hands on u, and I am telling you now I'll put you in hospital," one message read. Another stated, "Don't be surprised if u get hit sum time soon. You f...ked with the wrong person."[3] Gerada also sent a message through the social networking site, MySpace, to the boyfriend of the girl that Halkic was seeing saying "It's payback for him." The night of Halkic's death in February last year, Halkic sent Gerada a text saying "I need your help. You may not give a f... about me but just answer your phone tomorrow."[4] It was the last SMS's Halkic sent before leaping to his death from Melbourne's West Gate Bridge. While Gerada did not intend the messages to cause any harm to Halkic, he told the court that he felt betrayed by Halkic's action. "I would never physically or emotionally harm him. I did not realise the effect of my words. I miss Allem and I'm sorry for my behaviour."[5] The magistrate sentenced 21-year-old Gerada to an 18-month community based order and directed him to perform 200 hours of unpaid community work.

This is Australia's first prosecution related to cyberbullying but certainly not the first incident of cyberbullying and definitely not the last to have made the headlines of Australian media. Similarly, in another tragic story 14-year-old Chanelle Rae, a bright and bubbly student from Geelong's Western Heights College and an ardent supporter of her local football club, committed suicide after being bullied on Facebook.[6] Karen Rae, mother of Chanelle Rae, reportedly told the local radio station that her daughter had

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1 Lauren Wilson, 'Cyber bully convicted,' *The Australian*, 9 April 2010 <http://www.theaustralian.com.au/news/nation/cyber-bully-convicted/story-e6frg6nf-1225851590486> at 7 January 2012.

2 Selma Milovanoivc, 'SMS stalker spared jailed over bullying messages that led to suicide,' *The Age*, 8 April 2010 < http://www.theage.com.au/victoria/sms-stalker-spared-jail-over-bullying-messages-that-led-to-suicide-20100408-ru0l.html> at 7 January 2012.

3 Ibid.

4 Ibid.

5 Ibid.

6 Danny Lannen, 'Family tragedy: Mum recalls 'bubbly' teen,' *Geelong Advertiser*, 23 July 2009 <http://www.geelongadvertiser.com.au/article/2009/07/23/86771_news.html> at 8 August 2010.

been bullied online the night before her death.[7] "She came in and told me some message had come through and she wanted to die because of what it contained. I lay in bed with her and we just discussed it for about an hour. She left ... just as happy as ever. She didn't come in and say 'I'm going to kill myself', which she never ever ever had in her head."[8] Shortly after, Karen described her husband returned home after visiting a neighbour to find out that their daughter had committed suicide. In the same radio interview Karen Rae said that "I can guarantee you that if she didn't go on the Internet on Friday night she'd still be alive today."[9] In another incident, 14-year old school boy, Alex Wildman, from Kadina High School, NSW committed suicide after being cyberbullied and repeatedly bashed by fellow students.[10] Alex suffered a history of bullying which spanned over three separate high schools in addition to online bullying.[11] Alex was found dead in the garage of his family home two days after a series of intense bashing at his school.[12] Unlike Halkic's case, no charges have been laid against those involved in Rae or Wildman's death.[13]

Indeed the problem of cyberbullying is not Australia specific. A case that really brought to the spotlight the issue of cyberbullying worldwide was the suicide of Megan Meier from the state of Missouri, USA.[14] Megan, a 13-year-old American teenager, met a 16-year-old boy named "Josh" on MySpace. They developed an online friendship by exchanging messages back and forth on the social networking site over the course of several months.

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7 Ben Wise, 'Jeff Kennet offers his support'*3aw693NewsTalk,* 21 July 2009 <http://www.3aw.-com.au/blogs/3aw-generic-blog/jeff-kennett-offers-his-support/20090721-dr7z.html> at 29 January 2012.

8 Ibid.

9 Ibid.

10 Sallie Don, 'Call for action on bullying after suicide,' *Australian IT*, 18 June 2010 <http://www.theaustralian.com.au/australian-it/call-for-action-on-bullying-after-suicide/story-e6frgakx-1225881243848?referrer=email&source=AIT_email_nl&emcmp=Ping&emchn=Newsletter&emlist=Member> at 24 December 2011.

11 Larissa Cummings, 'Inquest for bullied suicide victim Alex Wildman,' *The Daily Telegraph*, 19 October 2009 <http://www.dailytelegraph.com.au/news/inquest-for-bullied-suicide-victim-alex-wildman/story-e6freuy9-1225788367825> at 20 December 2011.

12 Sallie Don, 'Call for action on bullying after suicide,' *Australian IT*, 18 June 2010 <http://www.theaustralian.com.au/australian-it/call-for-action-on-bullying-after-suicide/story-e6frgakx-1225881243848?referrer=email&source=AIT_email_nl&emcmp=Ping&emchn=Newsletter&emlist=Member>

13 There have been no further details to the case as it is probably under investigation.

14 Farrah Tomazin, 'Online assault,' *The Age*, 2 June 2008 <http://www.theage.com.au/national/online-assault-20080601-2kgl.html> at 29 October 2011; Steve, Pokin, ''MySpace' hoax ends with suicide of Dardenne Prairie Teen,' Suburban Journals, 13 Nov, 2007 <http://suburban-journals.stltoday.com/articles/2007/11/ 11/news/sj2tn20071110-1111stc_pokin_1.ii1.txt> at 23 January 2012.

Megan could not be happier. However, it was not long before Josh changed his tune and began to write a series of hurtful messages to Megan. In his last and probably most devastating message Josh told Megan that the world would be a better place without her.[15] Soon after, Megan hung herself in the closet of her bedroom. Investigators enquiring the cause of Megan's death revealed an unexpected twist to the story. They found that Josh was no adolescent teenage boy but 49-year-old Lori Drew, mother of one of Megan's former friends.[16] Lori Drew was then charged by the federal grand jury for creating a false MySpace account and using it to inflict emotional distress on her victim. Drew, however, was acquitted in 2009.[17] During the time of her trial, several states in the USA started considering legislation that would recognise cyberbullying as a crime. In April 2009, a bill that criminalises the use of the Internet to harass someone, popularly known as the 'Megan's Law' came into effect in Missouri, US.[18]

In another incident that took place in October 2003 in the state of Vermont in the US, Ryan Halligan, a 13 year old boy, committed suicide after being repeatedly bullied online.[19] Looking for clues that led to his son's death John Halligan logged on Ryan's computer which he used to keep in his bedroom.[20] He found out that the bully that his son befriended had started spreading a rumor that Ryan was gay on an instant messaging site after Ryan told him something that happened once.[21] In addition, his father discovered transcripts of an online conversation with a girl whom Ryan had a crush on. The transcripts revealed that the girl only pretended to like Ryan so she could gain his confidence and retrieve personal information about him which she later used to embarrass and humiliate him. She copied and pasted their private instant messaging conversations on other instant messaging sites used by his schoolmates.[22] Following the death of his son,

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[15] Ibid.

[16] Ibid.

[17] Caroline McCarthy, 'Report: Guilty verdict overturned in MySpace suicide case,' *CNET*, 2 July, 2009 <http://news.cnet.com/8301-13577_3-10278483-36.html > at 13 December 2011.

[18] The Library of Congress, H.R.1966 -- *Megan Meier Cyberbullying Prevention Act* (2009) <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.1966:> at 22 November 2011.

[19] John Halligan, Ryan's Story (2003) *Ryan's Story- In memory of Ryan Patrick Halligan* 1989 - 2003 <http://www.ryanpatrickhalligan.org/> at 12 October 2011.

[20] John, Flowers, 'Cyber-bullying hits community,' *Addison County Independent*, 19 October, 2006 <http://www.addisonindependent.com/200610cyber-bullying-hits-community> at 20 October 2011.

[21] Ibid.

[22] Ibid.

John Halligan campaigned endlessly for bullying and suicide prevention measures. The state of Vermont subsequently enacted the Bullying Prevention Policy Law in May 2004[23] which was followed by a *Suicide Prevention Act* in 2005.

The stories of Allen Halkic, Alex Wildman, Chanelle Rae, Megan Meir and Ray Halligan are well-known examples of cyberbullying that ended in extreme consequences – suicide. Not all cases of cyberbullying result in such sad and devastating consequences though. Research has shown that just like schoolyard bullying, most victims of cyberbullying are likely to experience low self-esteem, depression, stress and other related mental-health problems.[24] The growing number of incidents of cyberbullying has left education authorities, teachers, parents, government bodies and legal institutions in a conundrum. Little is understood of what needs to be done to tackle this new and treacherous form of bullying. Against the above background, this paper attempts to examine some issues related to cyberbullying within the Australian context. It starts by defining cyberbullying and describing its characteristics. This is followed by a review of studies that have examined the prevalence of cyberbullying in Australia. Next, bullying through the most common modes, social networking sites and mobile phones are discussed in detail. The paper then briefly discusses the laws which may be applicable to cyberbullying, consequences of an anonymous bullying act, and the role of intermediaries in preventing cyberbullying. Finally, the article concludes with a discussion of these various issues and provides a few recommendations on how to address cyberbullying.

2. DEFINITION AND CHARACTERISTICS OF CYBERBULLYING

Bill Beasley, a Canadian Education Advisor, coined the term cyberbullying. He defines *cyberbullying* as the use of information and communication tech-

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[23] See 'The Vermont Statutes Online' <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=16&Chapter=001&Section=00011 and http://www.leg.state.vt.us /statutes/fullsection.cfm?Title=16&Chapter=009&Section=00565> at 9 December 2011.

[24] *The Sydney Morning Herald*, 'Bullying affects brain structure,' 19 March 2010 < http://www.smh.com.au/lifestyle/people/bullying-affects-brain-structure-20100319-qje1.html> at 20 January 2012; Helen McGrath (For the Alannah and Madeline Foundation), Young people and technology: A review of the current literature (2nd edition) (2009) <http://www.amf.org.au/Assets/Files/2ndEdition_Youngpeopleandtechnology_LitReview_June202009.pdf > at 3 January 2012; P K Smith et al, 'Cyberbullying: Its nature and impact in secondary school pupils' (2008) 49(4) *Journal of Child Psychology and Psychiatry* 376.

nologies to support deliberate, repeated and hostile behaviour, by an individual or group, which is intended to harm others.[25] He lists e-mails, instant messaging, chatrooms or bash boards[26], text messages, websites, voting or polling booths as locations for cyberbullying.[27] However, in the bullying and harassment literature there are various other definitions of cyberbullying.[28] Most of these definitions describe cyberbullying as an extension of the general definition of bullying to the electronic environment.[29]

- An aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself.[30]
- Wilful and repeated harm inflicted through the medium of electronic text.[31]
- Covert psychological bullying conveyed through the electronic medium.[32]
- Bullying through email, instant messaging, in a chat room, on a website or gaming site, or through digital messages or images sent to a cellular phone.[33]

This article adopts the definition of cyberbulling provided by the Australian Institute of Criminology (AIC). The AIC defines cyberbullying as

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[25] Bill Beasley, *Cyberbullying.org* <http://www.cyberbullying.org/> at 21 July 2011.

[26] On the website, Bill Beasley defines bash board to be "the nickname for an online bulletin board, or a virtual chat room, where teenagers can go anonymously and write anything they want, true or false, creating or adding mean-spirited postings for the world to see." Bill Beasley, *Cyberbullying.org* <http://www.cyberbullying.org/ > at 21 July 2011.

[27] See Bill Beasley, Cyberbullying.org <http://www.cyberbullying.org/> at 21 July 2011.

[28] Note that most educators, policy makers and researchers have struggled to clearly define what cyberbullying is. See Helen McGrath (For the Alannah and Madeline Foundation), *Young people and technology: A review of the current literature* (2nd edition) (2009) <http://www.amf.org.au/Assets/Files/2ndEdition_Youngpeopleandtechnology_LitReview_June202009.pdf > at 3 June 2011.

[29] M A Campbell, 'Cyber-bullying: an old problem in a new guise?' (2005) 15 *Australian Journal of Guidance and Counselling* 68; Q Li, 'New bottle but old wine: A research on cyberbullying in schools' 2007 23(4) Computers and Human Behavior 1777.

[30] P K Smith, J Mahdavi, M Carvalho, S Fisher, S Russell and N Tippett, 'Cyberbullying: Its nature and impact in secondary school pupils' (2008) 49(4) *Journal of Child Psychology and Psychiatry* 376.

[31] J W Patchin and S Hinduja, 'Bullies move beyond the schoolyard: A preliminary look at cyberbullying' (2006) 4(2) *Youth Violence and Juvenile Justice* 148.

[32] S Shariff and R Gouin, 'Cyber-dilemmas: Gendered hierarchies, new technologies and cyber-safety in schools' (2006) 31(1) *Atlantis – A Women's Studies Journal* 26.

[33] Robin Kowalski, Susan P Limber and Patricia W Agatston, *What is cyberbullying?* <http://www.cyberbullyhelp.com/whatis.html> at 3 January 2012. The authors also propose 6 distinct categories that can fall within the definition cyberbullying. These categories include flaming, cyber harassment, denigration, outing and trickery, exclusion or ostracism and cyberstalking.

covert, psychological bullying behaviours among mainly teenagers through email, chat rooms, mobile phones, text messages, mobile phones cameras and websites.[34] Unlike the definition of cyberbullying, which is generally accepted to be an extension of traditional schoolyard bullying, the characteristics of cyberbullying can be unique and different from traditional bullying. Indeed, one of the most distinct features of cyberbullying is its ability to reach a wider audience as compared to traditional schoolyard bullying. In 2009 when two female students from an elite private school in Sydney, Australia, posted defamatory information about one of their classmates on MySpace[35], there is no guessing as to how many people would have viewed the messages before it was removed from the website. The table below describes various characteristics of cyberbullying in comparison with traditional bullying.[36]

Characteristics	Traditional bullying	Cyberbullying
Mode	Face to face	e-communication tools
Frequency	Decreasing	Increasing
Time frame	At, before or after school	Anytime, anywhere
Audience	Immediate bystanders	World wide exposure
Identity of perpetrator	Known to victim	Maybe known or anonymous
Primary targets	Boys	Girls
Reporting to adults	High reporting rate	Low reporting rate
Intervention	Acceptable level	Insufficient level
Punitive action	Frequent	Rare

TABLE 1. *CHARACTERISTICS OF CYBERBULLYING*

3. THE PREVALANCE OF CYBERBULLYING IN AUSTRALIA

There have been a few empirical studies to date that have been conducted in Australia,[37] and indeed many around the world[38] to provide some insights on the prevalence of cyberbullying. A study by Microsoft Australia on 300 young children in the age group of 10-17 years found that 25% of the survey participants were cyberbullied. In addition, the study found that more than 57% of parents and 59% of children had heard of incidents of cy-

[34] Australian Institute of Criminology, *Cyberbullying: issues for policy makers* (3 July 2007) <http://www.police.nsw.gov.au/__data/assets/pdf_file/0003/113817/aic_200707.pdf> at 12 December 2011.

[35] David Mark, 'Elite School's horrific cyber-bullying case,' *ABC News*, 7 May 2009 <http://www.abc.net.au/news/stories/2009/05/07/2563942.htm> at 11 November 2011.

[36] The table has been adapted from Ria Hanewald, 'Confronting the pedagogical challenge of cybersafety' (2008) 33(3) *Australian Journal of Teacher Education* 1. Please refer to the article for further explanation of each of the characteristics.

berbullying among the people they knew.[39] In another larger study of over 7000 of young children around Australia by Cross and colleagues,[40] it was found that the rates of cyberbullying ranged between 4.9% for Year-4 students to 7.8% for Year-9 students with a higher prevalence rate for females (7.7% for females versus 5.7% for males) and for those in Non-Government schools (8.4% for Non-Government schools versus 5.7% for Government schools).[41] In an unpublished study by Campbell and Gardner on 120 Year-8 students in Brisbane, nearly 14% of the respondents reported being target of cyberbullying, most often by text messages, and 11% revealed that they participated in cyberbullying.[42] Another study by McLoughlin, Burgess and

[37] See Marianne Betts, 'Federal Police research finds up to one in three teens are cyber bullied,' *Herald Sun*, 10 April 2010 <http://www.heraldsun.com.au/news/ victoria/federal-police-research-finds-up-to-one-in-three-teens-are-cyber-bullied/story-e6frf7kx-1225852033539> at 11 December 2011; Galaxy Research (For Microsoft Australia), Coping with cyberbullying difficult for four out of five parents (2008) *MSDN Blogs* <http://blogs.msdn.com/b/govtech/archive/2008/07/02/coping-with-cyberbullying-difficult-for-four-out-of-five-parents.aspx> at 11 July 2011; D Cross et al, *Australian covert bullying prevalence study (ACBPS): Results of a quantitative survey of students and staff* (2009) Department of Education, Employment and Workplace Relations <http://www.deewr.gov.au/Schooling/NationalSafeSchools/Documents/covertBullyReports/ACBPS%20chapter%205 .pdf> at 3 December 2011; M A Campbell, 'Cyberbullying: An old problem in a new guise?,' (2005) 15(1) *Australian Journal of Guidance and Counselling* 68; C McLoughlin, J Burgess and R Meyricke, *'Bullies in cyberspace: How rural and regional Australian youth perceive the problem of cyberbullying and its impact'* In Terry Lyons, Jon-Yul Choi and Greg McPhan (Eds.), ISFIRE 2009: International symposium for innovation in rural education (2009) <http://www.une.edu.au/ simerr/ISFIRE/pages/ISFIRE_proceedings.pdf> at 18 January 2012.

[38] See Peter Smith, Jess Mahdavi, Manuel Carvalho and Neil Tippett (For the Anti-Bullying Alliance), *An investigation into cyberbullying, its forms, awareness and impact, and the relationship between age and gender in cyberbullying* (July, 2006) <www.antibullyingalliance.org.uk/.../CyberbullyingreportFINAL230106.pdf> at 11 August 2011; P K Smith et al, 'Cyberbullying: Its nature and impact in secondary school pupils' (2008) 49(4) *Journal of Child Psychology and Psychiatry* 376; Q Li, 'New bottle but old wine: A research on cyberbullying in schools' (2007) 23(4) *Computers and Human Behaviour* 1777; National Assessment Center, At Risk Online: National Assessment of Youth on the Internet and the Effectiveness of i-SAFE Internet Safety Education (2006) *i-SAFE* <www.isafe.org/imgs/ pdf/outreach_press/2006_National_Assessments.pdf > at 3 June 2010; S Hinduja and J W Patchin, 'Cyberbullying: An exploratory analysis of factors related to offending and victimization' (2008) 29(2) *Deviant Behavior* 129; J W Patchin and S Hinduja, 'Bullies move beyond the schoolyard: A preliminary look at cyberbullying' (2006) 4(2) *Youth Violence and Juvenile Justice* 148; J Wolak, K J Mitchell and D Finkelhor (For the National Centre for Missing and Exploited Children), *Online victimization of youth: 5 years later* (2006) <www.unh.edu/ccrc/pdf/CV138.pdf> at 11 December 2011. Note that this does not attempt to be an exhaustive list but rather only a selection of the various empirical studies conducted worldwide on cyberbullying.

[39] Galaxy Research (For Microsoft Australia), *Coping with cyberbullying difficult for four out of five parents* (2008) MSDN Blogs <http://blogs.msdn.com/b/govtech/ archive/2008/07/02/coping-with-cyberbullying-difficult-for-four-out-of-five-parents.aspx> at 11 December 2011.

[40] D Cross et al, *Australian covert bullying prevalence study (ACBPS): Results of a quantitative survey of students and staff* (2009) Department of Education, Employment and Workplace Relations http://www.deewr.gov.au/Schooling/NationalSafeSchools/Documents/covertBullyReports/ACBPS%20chapter%205.pdf> at 3 July 2011.

[41] Ibid.

[42] M A Campbell, 'Cyberbullying: An old problem in a new guise?,' (2005) 15(1) *Australian Journal of Guidance and Counselling* 68.

Meyricke has examined the prevalence of cyberbullying for students from regional, urban and rural schools in Australia. They found that 24% of students had been victims of cyberbullying and that girls were more likely to be cyberbullied than boys. Additionally, cyberbullying was found to take place primarily through instant messaging, mobile phones and social networking sites.[43]

The inconsistencies in the above empirical studies reflect the difficulty in measuring the prevalence of cyberbullying in our community. They do, however, suggest the potential for cyberbullying to become a phenomenal problem affecting young children in Australia, particularly with society's increasing reliance on technology, and in particular the Internet, as an integral part of our everyday lives.

4. CYBERBULLYING AND ITS VARIOUS MODES

Information and Communication Technology (ICT) provides a variety of avenues for cyberbullying to take place. Bullies can send threatening or hurtful messages directly to the victim through emails, chat rooms, on social networking sites or on mobile phones. In addition, bullies are able to forward or post personal information or any other offensive materials in the form of text, picture or video for the public to view that has the potential to embarrass, intimidate, harass, threaten or ridicule the victim.

Two of the most popular platforms for cyberbullying are social networking sites and mobile phones. A number of cyberbullying incidents regularly take place on social networking sites such as Facebook, MySpace and Twitter. Facebook is currently the most popular social networking site in the world with more than 12 million teenagers worldwide[44] of which close to 1.8 million are in Australia.[45] MySpace had 63 million users worldwide[46]

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[43] C McLoughlin, J Burgess and R Meyricke, *'Bullies in cyberspace: How rural and regional Australian youth perceive the problem of cyberbullying and its impact'* In Terry Lyons, Jon-Yul Choi and Greg McPhan (Eds.), ISFIRE 2009: International symposium for innovation in rural education (2009) <http://www.une.edu.au/ simerr/ISFIRE/pages/ISFIRE_proceedings.pdf> at 18 July 2011.

[44] Jessica Guynn, 'Facebook and National PTA join forces on online child safety,' *Los Angeles Times* (Los Angeles), 10 June 2010, <http://latimesblogs.latimes.com/technology/2010/06/facebook-and-national-pta-join-forces-on-online-child-safety.html > at 11 July 2011.

[45] Kidman, A., 'Just How Many Australians Use Facebook', *Lifehacker*, 14 February 2012, <http://www.lifehacker.com.au/2011/02/just-how-many-australians-use-facebook> at 13 February 2012.

[46] Note that from February 2011 MySpace no longer labels itself as a social networking site, but an entertainment destination (Hernandez, 2011)

while Twitter had over 145 million registered users in 2011.[47]

Cyberbullying using mobile phone is potentially the most common mode given the ubiquity of mobile phones amongst young children in Australia.[48] A study conducted in 2008 to investigate the occurrence of bullying using mobile phones suggested that such incidents are more prevalent among senior high school students than generally perceived with nearly 94% of respondents surveyed having experienced bullying using a mobile phone.[49] The ability to send repeated SMS's/MMS's or to make threatening or insulting phone calls using mobile phones provides perpetrators to bully without actually having to face their victims. As mentioned Allem Halkic committed suicide by jumping from Melbourne's Westgate Bridge after his friend Philip Gerada bullied him by sending several vicious and threatening SMSs.

Another dimension to the use of mobile phones as a medium to cyberbully is the ability to access social networking sites on such devices. The growth of the 3G technology with Internet access on mobile phones have provided young children the ability to remain constantly 'logged-in' on their social networking sites. An estimated 250 million people access Facebook through their mobile devices.[50] No longer restricted to a computer with Internet connectivity, usually only available at home or at school, young children are able to access social networking sites or check their emails through their handsets that are 3G enabled whether they are on a school bus going to or returning home from school, out for dinner with the family or away on a school camp. In an exhaustive survey by the *Australian Interactive Media Industry Association*, the figure of respondents using their mobile phone to access social networking sites jumped from a mere 7% in 2009 to 32% in 2010, with half of those accessing the sites daily.[51]

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[47] A Hartley, 'Twitter has over 145 million users', *techradar* September 3, 2010, <http://www.techradar.com/news/internet/twitter-has-over-145-million-users-714116> at 10 February 2012.

[48] Australian Communications and Media Authority (ACMA), *Access to the Internet, broadband and mobile phones in family households, No.3,* (September, 2008) <http://www.acma.gov.au/WEB/STANDARD/pc=PC_311396> at 12 August 2011.

[49] Judy Drennan, 'M-bullying,' (2008) 7(1) *Professional Educator* 40.

[50] 'Statistics,' *Facebook,* <http://www.facebook.com/press/info.php?statistics> at 25 September 2011.

[51] Asher Moses, 'Aussies call an end to just phoning on mobiles,' *Sydney Morning Herald* (Sydney), 29 September 2009 < http://www.smh.com.au/digital-life/mobiles/aussies-call-an-end-to-just-phoning-on-mobiles-20090929-ga33.html> at 12 November 2011.

5. LAW AND CYBERBULLYING

Unlike many states in the US that have drafted specific legislative provisions to tackle cyberbullying after the suicides of Megan Meier and Ryan Halligan,[52] Australia is still undecided whether it should have a specific cyberbullying legislation. Cyberbullying related deaths such as that of Chanelle Rae[53] and Allem Halkic[54] may justify dedicated legislative responses to cyberbullying in Australia. Additionally, legal experts are also of the view that the burgeoning problem of cyberbullying and its ill-effects can only be tackled through specific cyberbullying legislation.[55] As mentioned at the beginning of this paper, Australia recently witnessed its first landmark prosecution case of cyberbullying. In the absence of specific cyberbullying legislation, this case was treated as a criminal offence and the perpetrator, Shane Gerada, was found guilty of stalking the victim, Allem Halkic. While this case provides precedents for future cyberbullying cases in Australia, understanding the laws applicable to cyberbullying is not very clear. The next section examines briefly the various forms of cyberbullying as a criminal offence or civil liability and the range of legislative provisions applicable to such activities.

5.1 CYBERBULLYING AND CRIMINAL LIABILITY

Very few people, in particular young children, realise that cyberbullying can constitute criminal conduct and attract criminal liability. People of only very young age are absolved of criminal responsibilities.[56] According to common law the age of criminal responsibility is 7 years. This has however

[52] Farrah Tomazin, 'Online assault,' *The Age* (Melbourne), 2 June 2008 <http://www.theage.-com.au/national/online-assault-20080601-2kgl.html> at 29 July 2011; Steve, Pokin, ''MySpace' hoax ends with suicide of Dardenne Prairie Teen,' *Suburban Journals,* 13 Nov, 2007 <http://suburbanjournals.stltoday.com/articles/2007/11/11/news/sj2tn20071110-1111stc_pokin_1.ii1.txt > at 23 May 2010; John Halligan, *Ryan's Story* (2003) Ryan's Story- In memory of Ryan Patrick Halligan 1989 - 2003 <http://www.ryanpatrickhalligan.org/> at 12 June 2011.

[53] Danny Lannen, 'Family tragedy: Mum recalls 'bubbly' teen,' *Geelong Advertiser,* 23 July 2009 <http://www.geelongadvertiser.com.au/article/2009/07/23/86771_news.html> at 8 November 2011.

[54] Selma Milovanoivc, 'SMS stalker spared jailed over bullying messages that led to suicide,' *The Age*, 8 April 2010 <http://www.theage.com.au/victoria/sms-stalker-spared-jail-over-bullying-messages-that-led-to-suicide-20100408-ru0l.html> at 7 November 2011.

[55] Birdie Smith, 'Law 'lags behind' cyber bullying,' *The Age* (Melbourne), 17 May 2007 <http://www.theage.com.au/news/national/law-lags-behind-cyber-bullying/2007/05/16/1178995236283.html> at 12 August 2011; Dan Harrison and Selma Milovanovic, 'Get tough on bullies: ex-judge,' *The Age* (Melbourne), 10 April 2011 <http://www.theage.com.au/national/get-tough-on-bullies-exjudge-201004 09-ryt4.html> at 12 August 2011.

been raised to 10 years by statutes in all Australian states and territories.[57] A cyberbully under the age of 10 years cannot be held criminally responsible in any circumstances. The reason for this is that the law considers them too young to have a criminal intent. However, the legal immunity children below the age of 10 years enjoy does not necessarily imply that the victim may be ineligible for compensation. This was raised in a recent ruling laid down by the Victorian Supreme Court. The Supreme Court overturned the ruling of the Victorian Civil and Administrative Tribunal (VCAT) which refused compensation to a school bully victim by citing the Victorian law that deems a child below the age of 10 years incapable of committing the offence because he or she cannot have a criminal intent. The Supreme Court held that the legal immunity children below the age of 10 years enjoy under the law is not an excuse to disregard a victim's suffering.[58] For those cyberbullies who are aged between 10 and 14 years the court presumes that the child does not have the capacity to be criminally responsible for his/her conduct. The prosecution would have to rebut this presumption and show beyond reasonable doubt that the child knew what he or she was doing was seriously wrong.[59] It would not be enough for the prosecution to show that the child thought the behaviour was simply naughty or mischievous.[60] A child above the age of 14 years is presumed to have the capacity to be

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[56] Craig Mackie, *The Criminal Responsibility of Children* Defence for Children International <http://www.dci-au.org/html/crime.html> at 22 August 2011; 'Is the age of criminal responsibility too low at 10?' *The Guardian* (UK), 15 march 2010 <http://www.guardian.co.uk/commentisfree/2010/mar/15/age-criminal-responsibility-debate> at 21 August 2011.

[57] Note that Australia has followed the UK with regard to the minimum age of 10 years. In European countries such as the Netherlands the minimum age is 12 years, in France is 13 years, in Germany is 14 years, in Sweden and Italy is 15 years, in Spain is 16 years and in Belgium is 18 years. The minimum age in Canada is 12 years, in New Zealand is 14 years and in Japan is 15 years. Most of the US states do not have a minimum age as to when a child can be prosecuted, but in those that do the age varies between six and 12 years. See http://www.parliament.uk/commons/lib/research/briefings/snha-03001.pdf. Note that a recent call in the UK to raise the minimum age of criminal responsibility from 10 to 12 has been rejected by the government. See BBC, *Calls to raise age of criminal responsibility rejected* (13 March 2010) <http://news.bbc.co.uk/ 2/hi/uk_news/8565619.stm> at 21 August 2011.

[58] *BVB v Victims of Crime Assistance Tribunal* [2010] VSC 57. Note that the victim was bullied during school hours and in school premises. The victim filed a case against the government for compensation. See also See Simon Lauder, *Bullied girl hopes court win helps other victims* (10 March 2010) ABC News <http://mulr.law.unimelb.edu.au/files/aglcdl.pdf> at 15 August 2011.

[59] See *Criminal Code Act 1995* (Cth) s 7(1),(2); *Crimes Act 1914* (Cth) ss 4M, 4N; *Criminal Code Act 2002* (ACT) ss 25-26; *Children (Criminal Proceedings) Act 1987* (NSW) s 5; *Criminal Code* (NT) ss 38(1),(2); *Criminal Code 1899* (QLD) s 29(1),(2); *Criminal Code Act 1924* (Tas) s 18(1),(2); *Children and Young Persons Act 1989* (VIC) s 127; *Criminal Code Act Compilation Act 1913* (WA) s 29.

[60] *C v DPP* [1996] 1 AC 1.

criminally responsible for his/her conduct and there is no onus on the prosecution to prove that it is actually the case.[61] The act of cyberbullying can come under any one or more of offences such as: assault; crime using telecommunication services; violation of Australian state and territory threat offences; violation of stalking offences; upskirting; criminal defamation and sexting.[62]

5.2 CYBERBULLYING AND CIVIL LIABILITY

Cyberbullies can also incur various forms of civil liability. Unlike criminal law age is not an issue for a civil liability. The only question that needs to be answered is that the bully was old enough to know that his or her conduct was wrongful.[63] However, one of the main concerns that a plaintiff will have to consider prior to suing is whether the perpetrator has sufficient financial capital to warrant the case. It is highly unlikely that a young child sitting behind a remote computer busy bullying his/her victims will have enough financial resources to make him worth suing. The bully's parents may have financial resources but under Australian law, parents are generally not legally liable for the acts of their children.[64]

The various forms of civil liability that cyberbullying may constitute are tort of assault, action on the case for physical injuries or nervous shock, tort of invasion of privacy and tort of defamation.[65]

6. CYBERBULLYING: THE ROLE OF INTERMEDIARIES

In early 2010, tribute pages were set up on Facebook to honour the death of two Australian children from Queensland, 12 year old Elliott Fletcher and 8 year old Trinity Bates. Vandals defaced the tribute web pages and used vulgar and hurtful contents. There were also accusations that the obscene imagery on the tribute pages included child pornography and bestiality. Despite repeated complaints from the public and the issue being raised in the

[61] Craig Mackie, *The Criminal Responsibility of Children* Defence for Children International <http://www.dci-au.org/html/crime.html> at 22 September 2011.

[62] See 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* <https://elaw.murdoch.edu.au/index.php/elawmurdoch/article/view/24> at 24 January 2012.

[63] *McHale v Watson* (1964) 111 CLR 384 at 386 per Windeyer J.

[64] *Smith v Leurs* (1945) 70 CLR 256.

[65] See 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* <https://elaw.murdoch.edu.au/index.php/ elawmurdoch/article/view/24> at 24 March 2012.

media the offensive contents were not removed. Queensland police then contacted Facebook authorities in Australia for the removal of the offensive content but no measures were taken. This led the Premier of Queensland, Anna Bligh, to contact the CEO and the founder of Facebook, Mark Zuckerberg, for the removal of the offensive content.[66]

Eventually the offensive content was removed. Facebook's global communications and policy director, Debbie Frost, later acknowledged in a press conference that Facebook found it hard to respond to the situation because it had not really come across such as thing before but was hopeful that Facebook and other social networking sites would continue to operate as platforms rather than publishers and not be responsible for any third party content. The matter did not go the courts but if it had, it would have been interesting to see the court's interpretation of Clause 91 of the BSA to Facebook's lack of proper handling of this incident. In two other incidents, tribute pages for a Melbourne teenager and a South Australian family were denigrated by vandals.[67] Facebook did eventually remove the offensive content from the tribute pages but only after reports in the media criticised them for being too slow.[68]

7. CYBERBULLYING AND ANONYMITY: WHO IS THE BULLY?

Anonymity is the placement of comments using social networking sites, chat rooms that cannot be attributed to a particular or real individual.[69] The person trying to remain anonymous prefers not to disclose his/her identity and often uses a pseudonym instead of his or her real name. In the case of cyberbullying, the bully may choose not to disclose his or her identity and

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[66] See Queensland Premier Anna Bligh's letter to CEO and founder of Facebook Mark Zuckerberg at Anna Bligh (Premier of Queensland) (24 February 2010) *Brisbane times* <http://images.brisbanetimes.com.au/file/2010/02/25/1172560/blighletter.pdf?rand=1267060595824> at 12 August 2011.

[67] Asher Moses, 'Pressure on Facebook after tributes sites vandalised,' *The Age* (Melbourne), 10 November 2010 <http://www.theage.com.au/technology/technology-news/pressure-on-facebook-after-tributes-sites-vandalised-20101110-17ml4.html> at 11 November 2011; Asher Moses, 'Ghoulish Facebook vandals mock Australian laws' *The Age* (Melbourne), 9 November 2010 <http://www.theage.com.au/technology/technology-news/ghoulish-facebook-vandals-mock-australian-laws-20101109-17lku.html> at 11 November 2011.

[68] Ibid.

[69] Faye Mishna, Michael Saini and Steven Solomon, 'Ongoing and Online: Children and Youth's Perceptions of Cyber Bullying' (2009) 31 *Children and Youth Services Review* 1222. Please note masquerading is another form of cyberbullying in which the perpetrator assumes a peer's typically a friend's identity to bully others. This happens in those cases where students give out their passwords to their friends as a sign of strong mateship. The friend then uses the password to gain access to the friend's account and pretending to be that person bullies others. For the purpose of this article anonymity includes masquerading.

mask himself often through a pseudonym. The victim may never be able to know who the bully is. The possibility of being anonymous lets the bully sit comfortably in a remote location preferably his or her home, and behave in a manner that he or she might not have otherwise. Anonymity enables the aggressor to threaten, harass, or denigrate others with little fear of repercussions or of being traced. Megan Meier was a victim of anonymous bullying on MySpace that led to her suicide. The mother of Megan's friend, Lori Drew, used the pseudonym 'Josh Evans' to cyberbully her. In a recent study on cyberbullying involving school students, most of those who experienced cyberbullying did not know who the bully was.[70] When questioned why they did not alert their parent about the bullying one of the reasons stated was that "it is of no use as anonymous bullies cannot be tracked."[71] They felt that their parents would not be able to identify the real perpetrator.

8. DISCUSSION AND RECOMMENDATION

Bullying through the use of ICT appears to have a more menacing effect on children than traditional schoolyard bullying. Cyberbullies, often geographically dispersed and difficult to identify and locate, can harass and abuse their victim with the click of a button to a limitless audience. This often creates a significant problem for the victim seeking legal redress. Many young people also falsely believe that the Internet provides them absolute annymity and thus there would be no penalty for their egregious behaviour. The continuous rise in the incidents of cyberbullying is a clear indication that there is a lack of effective measures to address online abuse. The following sections examine some major issues associated with tackling cyberbullying and provide some recommendations.

8.1 ABUSE ON SOCIAL NETWORKING SITES - HOW AND WHOM TO REPORT?

There has been a sharp increase in the number of cyberbullying incidents that take place on social networking sites, in particular Facebook. The UK's Child Exploitation and Online Protection (CEOP) [72] centre in the UK received a significant number of complaints about Facebook in early 2010.[73] These complaints were made via e-mails and other means to CEOP because

[70] Ibid.

[71] Ibid.

[72] Exploitation and online Protections Centre (CEOP), <http://www.ceop.gov.uk/> at 11 October 2011.

they could not be made to Facebook. Following this the head of CEOP urged Facebook to make a *panic button* mandatory on its home page.[74] After some initial hesitance Facebook conceded to the demands of the CEOP. The application is now available to users of Facebook in the UK. From July 2010 UK-based Facebook members between the age of 13 and 18 years can see an advertisement on the site that encourages them to install the application the same way they would install any other third-party Facebook application.[75] The *panic button* is expected to provide victims in the UK an avenue to report online abuse or any inappropriate or potentially illegal activity directly to the CEOP and/or to seek advice about any potential dangers. The advantage of having such a *panic button* is that victims do not have to contact the police which can often be intimidating, time consuming and ineffective.[76] Instead, the *panic button* provides them the opportunity to report any act of cyberbullying in a timely manner to authorities who are adequately skilled to deal with such incidents.[77] The concept of the *panic button* available to UK users should be extended to Facebook users worldwide, including Australia. However, installing a *panic button* or any other form of *alarm/reporting tool* on a social networking site would also require authorities to inform young users of the benefits of the tool.

The main limitation of such an alarm tool is that *only* the victims have the ability to lodge a complaint of the offensive content; parents or guardians are unable to take such actions on their behalf. Parents or guardians are often aware that their child is being cyberbullied although they may not be aware of the severity of the act. Where parents are aware of such heinous acts, they too should be provided the opportunity to take actions to protect their vulnerable child from cyberbullying and any potential self harm. For

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[73] 'Facebook urged to add panic button at meeting with CEOP,' *BBC News*, 12 April 2010, <http://news.bbc.co.uk/2/hi/uk_news/8614787.stm> at 21 July 2011.

[74] Note that panic button is used by other social networking sites such as Bebo and MySpace. Clicking on the button directs the person to a site that details how to handle cyberbullying, hacking, viruses, distressing material and inappropriate sexual behaviour.

[75] Caroline McCarthy, 'Facebook to promote new U.K. safety app' *Cnet News*, 12 July 2010 <http://news.cnet.com/8301-13577_3-20010244-36.html> at 21 November 2011.

[76] This is discussed in the following paragraph.

[77] Although Facebook and Twitter provide victims the ability to report offensive materials or conduct directly to their authorities, the effectiveness of these measures has been less than satisfactory.[1] See Child Exploitation and online Protections Centre (CEOP), <http://www.ceop.gov.uk/> at 11 October 2011. Another important issue to note at this point is that if a child has been a victim of bullying or harassment on any of these social networking sites, it is only the child (i.e. the registered user) who has the ability to report the incident. Parents or guardians of the child are unable to lodge the complaint on behalf of the child.

example, in the case of Chanelle Rae mentioned earlier, the mother was aware that her daughter was being bullied and harassed online. If she could have reported this case to Facebook authorities in an appropriate and timely manner her actions might have saved her daughter from killing herself. At present, parents' inability to report makes them feel helpless. The only way they can address such matters is by contacting a law enforcement agency. On average every two weeks a parent reports an incident of cyberbullying to the police.[78] The police have also acknowledged the sharp rise in the number of such complaints.[79] Unfortunately the police does not have adequate knowledge or training about the various laws that may be applicable to incidents of cyberbullying and as a consequence victims of cyberbullying and/or their parents are sent home without any appropriate action taking place.[80] It is therefore important that the police and other law enforcement agencies be educated about the appropriate course of legal actions available with cases of cyberbullying. More importantly, parents and guardians of young children should be allowed to lodge a complaint on behalf of the child victim. For instance, it should be made compulsory for young children below the age of 16 to provide their parents' or guardians' email ID when they create an account on a social networking site. Any complaints received by the social networking site authorities or by the CEOP (in the UK) and its equivalent in other countries from such email IDs should be treated as high priority and immediate actions should be taken.

Another option available to victims and their parents is to report cyberbullying to intermediaries (ISP/ICH) at their earliest. Note that intermediaries in Australia are not liable for any offensive content so far they are unaware of it - a defence provided by Clause 91 of the BSA.[81] However, once they become aware of the offensive content intermediaries lose this defense. Thus, children who are victims of online bullying should at their earliest bring this to the notice of their intermediaries (ISP/ICH) that are hosting the

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[78] Carmel Egan, 'Cyber-crime cases ignored by untrained police', *The Age* (Melbourne), 7 March 2010 <http://www.theage.com.au/victoria/cybercrime-cases-ignored-by-untrained-police-20100306-ppth.html> at 20 October 2011.

[79] NSW Assistant Commissioner Peter McErlain told the ABC in May 2010 that there had been a sharp increase in the number of complaints associated to online activities such as harassment and bullying. See Louisa Hearn, 'Phoney porn scam takes Aussies for a ride', *The Age* (Melbourne), 9 June 2010 <http://www.theage.com.au/technology/security/phoney-porn-scam-takes-aussies-for-a-ride-20100608-xtih.html> at 23 Novemeber 2011.

[80] 'Police fall behind on cybercrime,' *The Age* (Melbourne), 7 March 2010 <http://www.theage.-com.au/victoria/police-fall-behind-on-cyber-crime-20100306-pptc.html> at 2 October 2011.

[81] A defence provided by Clause 91 BSA.

offensive content. Parents aware of the offensive content should also contact the intermediary at their earliest. By doing so intermediaries lose the defense provided under Clause 91 for any future publications of the offensive content. Note that an intermediary that has been notified of the offensive web pages or blog postings but has failed to prevent the publication of that content can be liable under the *Criminal Code Act* 1995 (Cth). The offence is punishable with imprisonment up to 3 years.[82]

However, most instances of cyberbullying on the Internet happen through social networking sites whose hosting servers may not necessarily be located in Australia. For example, none of Facebook's servers[83] are located in Australia. In fact, their locations are kept secret as per the company.[84] In such circumstances Facebook is not an ICH for the purpose of the BSA and therefore the BSA and the *Criminal Code Act* 1995 (Cth) will not be applicable to Facebook. If Facebook authorities ignore the request from Australian authorities to remove the offensive content from their website or fail to cooperate there might be no legal recourse to the issue. The only option in such a situation is to contact the local ISP that delivers overseas contents to the Australian territory because unlike ICHs, ISPs cannot be located overseas. Thus, the local ISP such as Telstra and Optus that broadcasts contents from ICH located overseas to an Australian household, if contacted early and informed about the offensive content but fails to prevent the publication of that content, may be punished with an imprisonment of up to 3 years. Informing the ISP rather than an ICH located overseas of the offensive content is an effective measure in practicality, especially for those offensive contents that are hosted overseas.

The idea of an Internet ombudsman to enforce the removal of offensive material promptly from websites was suggested by the then Prime Minister of Australia, Kevin Rudd.[85] This was prompted by the troublesome removal of pornographic images from the tribute pages of Elliot Fletcher and Trinity

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[82] Section 474.14 (Division 474-Telecommunication Offences) of the Criminal Code Act 1995 (Cth) makes it an offence to use the Internet "in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive."

[83] A server is a computer or set of computers that hosts the website.

[84] Caitlin Fitzsimmons, 'Faceless no more: Facebook admits errors,' *The Australian* (Melbourne), 1 March 2010 <http://www.theaustralian.com.au/business/media/faceless-no-more-facebook-admits-errors/story-e6frg996-1225835350571> at 1 December 2011.

[85] Ari Sharp, 'Rudd flags Internet Ombudsman,' *The Age* (Melbourne), 27 February 2010 <http://www.theage.com.au/national/rudd-flags-internet-ombudsman-20100226-p97l.html> at 1 December 2011.

Bates on Facebook.[86] The idea was supported by several Australian Senators and academics who felt that the creation of the ombudsman will be able to address more efficiently and effectively complaints dealing specifically with offensive material on the Internet as compared to waiting for an ICH/ISP to respond. However, ombudsman directions will be limited to only intermediaries (ISPs/ICHs) located within Australia. Jurisdictional issues would make it difficult for the Ombudsman office to regulate an ICH located overseas (e.g. California based Facebook).[87] Note that presently a Joint Parliamentary Standing Committee on Cyber Safety is discussing issues with regard to social networking sites and the merits of an online ombudsman.[88]

8.2 A SPECIFIC LEGISLATIVE FRAMEWORK FOR CYBERBULLYING - SHOULD AUSTRALIA HAVE ONE?

As mentioned earlier there exists a variety of legislation in Australia that has the ability to deal with cyberbullying. Under such legislation, cyberbullying can be a civil liability or a criminal offence. For example, in August 2010, 22 years old Jessica Chantelle Cook from Queensland received a three-month suspended jail sentence for posting offensive material on a Facebook tribute page for murdered Sunshine Coast woman, Justine Jones. Cook pleaded guilty in the Gympie Magistrates Court to one count of using a carriage service to menace, harass or cause offence.[89]

Despite the existence of a variety of legislation to tackle cyberbullying, there is a view that Australia needs a specific legislation to address cyberbullying.[90] Alastair Nicholson, former Chief Justice of the Family Court of

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[86] Asher Moses, 'Pressure on Facebook after tributes sites vandalised,' *The Age* (Melbourne), 10 November 2010 < http://www.theage.com.au/technology/technology-news/pressure-on-facebook-after-tributes-sites-vandalised-20101110-17ml4.html> at 11 November 2011; Asher Moses, 'Ghoulish Facebook vandals mock Australian laws,' The Age (Melbourne), 9 November 2011 <http://www.theage.com.au/technology/technology-news/ghoulish-facebook-vandals-mock-australian-laws-20101109-17lku.html> at 11 November 2011.

[87] See Caitlin Fitzsimmons, 'Facebook hits back in spat with Australian Federal Police,' *The Australian* (Melbourne), 31 May 2010 <http://www.theaustralian.com.au/business/media/facebook-hits-back-in-spat-with-australian-federal-police/story-e6frg996-1225873247259> at 3 September 2011.

[88] Asher Moses, 'Pressure on Facebook after tributes sites vandalised,' *The Age* (Melbourne), 10 November 2010 <http://www.theage.com.au/technology/technology-news/pressure-on-facebook-after-tributes-sites-vandalised-20101110-17ml4.html> at 11 November 2011

[89] Asher Moses, 'Ghoulish Facebook vandals mock Australian laws' *The Age* (Melbourne), 9 November 2010 <http://www.theage.com.au/technology/technology-news/ghoulish-facebook-vandals-mock-australian-laws-20101109-17lku.html> at 11 November 2011.

[90] See Dan Harrison and Selma Milovanovic, 'Get tough on bullies: ex-judge,' *The Age* (Melbourne), 10 April 2010; Birdie Smith, 'Law 'lags behind' cyber bullying,' *The Age* (Melbourne), 17 May 2007 <http://www.theage.com.au/news/national/law-lags-behind-cyber-bullying/2007/05/16/1178995236283.html> at 12 August 2011.

Victoria and chairman of the National Coalition Against Bullying, argues that without a specific legislation lawyers have recourse to a variety of existing legislation that are extremely limited and have failed to keep up with advances in technology.[91] One key advantage of having a specific cyberbullying legislation is that police, parents and school authorities can take more appropriate and timely actions when a child is cyberbullied if there are specific provisions that govern such callous acts. As mentioned above, police often refuses to lodge complaints from disgruntled victims of cyberbullying because of their lack of knowledge of the various laws applicable to incidents of cyberbulling. A specific cyberbullying legislation that provides a definition of cyberbullying with examples of various types of activities that constitute cyberbullying, and lay out punishment and penalty for those involved in such activities, will provide victims, parents and the police a better understanding of the appropriate actions and measures available to them. More importantly, a more formal punishment for cyberbulling could potentially deter such acts by creating a sense of fear amongst bullies.

8.3 WHO SHOULD BE RESPONSIBLE FOR PREVENTING CYBERBULLYING - SCHOOLS OR PARENTS?

The increasing number of tragic incidents among young people, in particular teen suicides, prompted by cyberbullying has raised significant concerns in the society. However, a question that often arises is who should be responsible for preventing cyberbullying occurring beyond school gates and after school hours - schools or parents? There is an argument that schools should take more responsibility for students' online activities.[92] However, it seems unfair to hold schools accountable for children's after-school online activities. In most cases it would be impossible for school authorities to effectively monitor and track their students' after-school online activities. They cannot and should not be held responsible to protect young children from online risks. Instead, parents or guardians should be accountable for their children's Internet and mobile phone activities. A sur-

[91] Ibid.

[92] The Deputy State Coroner of the state of New South Wales Mr. Malcolm MacPherson while dealing with cyberbullying related death of Alex Wildman stated that Education Departments in Australia should take more responsibility for students' online activity, including cyberbullying. See Sallie Don, 'Call for action on bullying after suicide,' *Australian IT*, 18 June 2010 <http://www.theaustralian.com.au/australian-it/call-for-action-on-bullying-after-suicide/story-e6frgakx-1225881243848?referrer=email&source=AIT_email_nl&emcmp=Ping&emchn=Newsletter&emlist=Member > at 24 July 2011

vey conducted by Yahoo USA in April 2010 found that only 45% of parents talk to their children about online safety at least once a month.[93] In fact, parents try to pass the burden on to schools by expecting them to take a leading role in educating their child about online safety. Up to 75% of parents that took part in the Yahoo survey preferred that their children's school play a role in teaching kids about online safety.[94] Instead of pointing fingers towards each other, parents, schools, government authorities, social networking sites and telecommunication service providers should collaborate to educate children about online safety, and in particular cyberbullying. In the US, Facebook and the parent-teacher association (PTA) have recently teamed up with an aim to reduce cyberbullying and other online risks to children.[95] Facebook and the National PTA aim to provide information and other resources through their respective websites and through the PTA's 24,000 local chapters.[96] Similar measures should be implemented in Australia. Social networking sites and the equivalent PTA in Australia ie Parents & Friends Association[97] (PFA) should collaborate to educate children about safe methods of using the Internet, in particular popular sites such as Facebook and Twitter. Indeed, this should also encompass telecommunication service providers who can take a lead role in educating children on the safe usage of mobile phones.

9. CONCLUSION

ICT has created new ways for children to harass and bully each other. It is unfathomable and somewhat ironic to see how the phenomenon of cyberbullying has affected our society and indeed most disturbing to hear cases of teenagers committing suicide or being severely emotionally scarred through the misuse of the latest communication tools that were designed to improve the quality of our lives. Unfortunately the ICT's very nature of being always-on, accessible-from-anywhere, and often anonymous means of

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[93] Jessica Guynn, 'Facebook and National PTA join forces on online child safety,' *LA Times-Technology*, 10 June 2010 <http://latimesblogs.latimes.com/technology/2010/06/facebook-and-national-pta-join-forces-on-online-child-safety.html > at 12 July 2011.

[94] Ibid.

[95] Ibid.

[96] Ibid.

[97] For example see The Federation of Parents and Friends Associations of Catholic Schools in Qld <http://www.pandf.org.au/asp/index.asp?page=aboutus&cid=5200&gid=170> at 25 November 2011

communication makes it difficult to regulate what children say or do to each other.

Social networking sites, telecommunication companies and intermediaries can play a major role in combating cyberbullying by not only providing victims and their parents an opportunity to report such abuse but also by playing a pivotal role in educating users that such options exist ie relief is possible before approaching law enforcement authorities. Parents and schools can also play an active and collective role in preventing cyberbullying. The best way to combat cyberbullying is for all stakeholders to collaborate with each other and educate children about safe methods of using the Internet and mobile phones. While the variety of legislation that currently exists may not be the perfect solution to the problem of cyberbullying, they still play an important part in curbing this social epidemic. However, a specific cyberbullying legislation that is up to date and has taken into consideration the latest developments in technology is likely to be more effective in addressing cyberbullying. Stakeholders, in particular law enforcement authorities, will be able to take appropriate and timely and if required even pre-emptive actions.