

## 15. Harassment

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### Summary

15.1 Many serious invasions of privacy also amount to harassment. Harassment involves a pattern of behaviour or a course of conduct pursued by an individual with the intention of intimidating and distressing another person. Harassment often involves intruding into someone's private space and affairs, and perhaps misusing their personal information. Laws that target harassment will therefore often also serve to protect people's privacy.

15.2 In this chapter, the ALRC recommends that if a privacy tort is not enacted, the states and territories should enact a statutory tort of harassment, to provide those subjected to harassment with a means of civil redress.

15.3 Harassment legislation would provide Australians with protection similar to that in other countries, including the United Kingdom, New Zealand and Singapore.

15.4 Further consideration of the detailed design of a harassment tort will be necessary. Generally, a new harassment tort should capture a course of conduct that is genuinely oppressive and vexatious, not merely irritating or annoying. The tort should be confined to conduct that is intentionally designed to harm or demean another individual.

15.5 A harassment tort should also be the same throughout the country. The states and territories should therefore enact uniform legislation, if the Commonwealth does not have the Constitutional power to enact a harassment tort.

15.6 This chapter also highlights some gaps and inconsistencies in existing criminal laws concerning harassment, as well as some challenges for their enforcement.

## Statutory tort of harassment

**Recommendation 15–1** If a statutory cause of action for serious invasion of privacy is not enacted, state and territory governments should enact uniform legislation creating a tort of harassment.

15.7 A serious invasion of privacy may often also amount to harassment. Harassment involves deliberate conduct. It may be done maliciously, to cause anxiety or distress or other harm, or it may be done for other purposes. Regardless of the intention, harassment will often cause anxiety or distress. Harassment also restricts the ability of an individual to live a free life.

15.8 In some instances, harassment will clearly amount to an interference with someone’s privacy. For example, the following conduct—where it is repeated, unwanted and intended to distress and demean an individual—may amount to harassment and an invasion of privacy:

- following or keeping someone under surveillance;
- eavesdropping and wiretapping;
- reading private letters and other private communication;<sup>1</sup>
- using surveillance devices to monitor, intimidate or distress someone;<sup>2</sup>
- publishing private information;
- taking photos of someone in a private context, without their permission; and
- making persistent and unwanted contact, such as by telephone or email.<sup>3</sup>

15.9 The ALRC has received submissions from numerous stakeholders outlining different forms of behaviour that would seem to amount to both harassment and a serious invasion of privacy.<sup>4</sup>

15.10 If a new tort for serious invasions of privacy is not enacted, the ALRC recommends the enactment of a statutory cause of action for harassment. This will help deter and redress some egregious types of invasion of privacy that are not currently the subject of effective legal protection.

1 Ruth Gavison, ‘Privacy and the Limits of the Law’ (1979) 89 *Yale Law Journal* 421, 429.

2 In *Howlett v Holding*, an injunction was granted to restrain aerial surveillance under the *Protection from Harassment Act 1997* (UK). This case involved the defendant flying banners from private aircraft addressed to, and referring to, the plaintiff in derogatory terms, and dropping leaflets containing information about the plaintiff: *Howlett v Holding* [2006] EWHC 41 (QB) (25 January 2006).

3 Some of these are examples of conduct that has been the subject of claims under the *Protection from Harassment Act 1997* (UK).

4 Domestic Violence Legal Service and North Australian Aboriginal Justice Agency, *Submission 120*; Women’s Legal Services NSW, *Submission 115*; National Children and Youth Law Centre, *Submission 61*; Women’s Legal Service Victoria and Domestic Violence Resource Centre Victoria, *Submission 48*.

### Existing civil remedies

15.11 There are gaps and limitations in existing civil remedies for persons subjected to harassment.

15.12 Australian courts have not recognised a common law cause of action for harassment. In *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd*,<sup>5</sup> Gummow and Hayne JJ referred to ‘what may be a developing tort of harassment’,<sup>5</sup> citing the work of Professor Stephen Todd from New Zealand.<sup>6</sup> New Zealand has now enacted the *Harassment Act 1997* (NZ) and the courts have recognised a tort of intrusion into seclusion.<sup>7</sup>

15.13 In *Grosse v Purvis*,<sup>8</sup> a Queensland District Court judge recognised an actionable right to privacy after a finding that the defendant had persistently and intentionally stalked and harassed the plaintiff for six years. Because of his conclusion on the actionable right to privacy, there was no need to decide whether a tort of harassment should be recognised.

15.14 At present, Australian law does not provide civil redress to the victims of harassment. There is some protection in defamation law, as well as the torts of battery or trespass to the person where conduct becomes physically threatening or harmful. If bullying or harassment, including cyber-bullying, occurs on school property within school hours, a school may be liable under the law of negligence on the basis of a non-delegable duty of care.<sup>9</sup>

15.15 However, many instances of harassment will involve a serious invasion of privacy and yet not give rise to an existing tort. As discussed in Chapter 3, this is a significant gap in the protection of privacy in the common law.<sup>10</sup> For example, the tort of trespass to land can be used only where there has been an unlawful intrusion onto property.<sup>11</sup> Surveillance or harassment from outside the property would not come within the tort. Further, the harassment may occur on property where the victim is not the occupier with the required title to sue for trespass.<sup>12</sup>

15.16 Harassment may not involve any physical contact amounting to battery, or threat of physical contact amounting to assault.<sup>13</sup>

5 *Australian Broadcasting Commission v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, [123].

6 Stephen Todd, ‘Protection of Privacy’ in Nicholas Mullany (ed), *Torts in the Nineties* (LBC Information Services, 6th ed, 1997).

7 *C v Holland* [2012] 3 NZLR 672. The New Zealand provision is discussed further below.

8 *Grosse v Purvis* [2003] QDC 151 (16 June 2003); Des A Butler, ‘A Tort of Invasion of Privacy in Australia?’ (2005) 29 *Melbourne University Law Review* 352. Doubt has been expressed about the correctness of *Grosse v Purvis*: see Ch 3. The case was settled before the defendant’s appeal was heard.

9 *Commonwealth v Introvigne* (1982) 150 CLR 258.

10 See Barbara McDonald, ‘Tort’s Role in Protecting Privacy: Current and Future Directions’ in J Edelman, J Goudkamp and S Degeling (eds), *Torts in Commercial Law* (Thomson Reuters, 2011).

11 *Plenty v Dillon* (1991) 171 CLR 635.

12 *Kaye v Robertson* [1991] FSR 62.

13 Rosalie Balkin and Jim Davis, *Law of Torts* (LexisNexis Butterworths, 5th ed, 2013) [3.16].

15.17 The tort of nuisance requires an interference with the lawful occupier's use and enjoyment of land.<sup>14</sup> Nuisance has been useful in limited cases, such as where a CCTV camera was erected at a neighbour's backyard, prohibiting their use and enjoyment of the garden.<sup>15</sup> However, again, a person's right to sue is limited.<sup>16</sup>

15.18 The tort of wilful infliction of nervous shock<sup>17</sup> is an inadequate remedy for many instances of harassment, as a plaintiff must prove actual physical or psychiatric injury. Harassment, however, will often result only in emotional distress.

### **A harassment tort**

15.19 Given these gaps, the ALRC recommends the enactment of a new tort to provide civil remedies, including damages, to persons subjected to harassment. Several stakeholders supported a statutory tort of harassment.<sup>18</sup> The tort would be actionable where there is a course of conduct, linked by a common purpose and subject-matter, intentionally committed to cause distress and intimidation. Further work is necessary on the detailed design of the tort, but these might be the key elements.

15.20 It is important that the threshold is not set too low, so the new tort does not capture behaviour which is merely irritating or slightly disturbing. A new tort for harassment would provide for a targeted avenue of civil redress where the conduct is not redressed by existing torts. Civil remedies, particularly compensatory damages, can vindicate a plaintiff's interests.<sup>19</sup>

15.21 Several stakeholders opposed the introduction of a statutory tort of harassment.<sup>20</sup> For example, the Australian Mobile Telecommunications Association and Communications Alliance argued that the existing privacy regulatory framework is adequate to prevent and redress conduct amounting to harassment.<sup>21</sup> However, the ALRC considers the gaps identified above demonstrate the need for a civil action in privacy or harassment.

15.22 Guardian News and Media Limited and Guardian Australia submitted that it would be preferable to introduce the new privacy tort than modify existing laws relating to harassment.<sup>22</sup> Their submission raises the concern that a harassment tort does not involve a public interest balancing test, unlike the new privacy tort. Given

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14 Ibid [14.1].

15 *Raciti v Hughes* (1995) 7 BPR 14, 837.

16 *Hunter and Others v Canary Wharf Ltd; Hunter and Others v London Docklands Corporation* [1997] UKHL 14.

17 *Wilkinson v Downton* (1897) 2 QB 57; *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 417.

18 Domestic Violence Legal Service and North Australian Aboriginal Justice Agency, *Submission 120*; Office of the Victorian Privacy Commissioner, *Submission 108*; Public Interest Advocacy Centre, *Submission 105*; N Henry and A Powell, *Submission 104*; Australian Sex Party, *Submission 92*. The Australian Sex Party preferred a model whereby civil remedies were available for breaches of the criminal law.

19 *Uren v John Fairfax & Sons* (1966) 117 CLR 118, 150 (Windeyer J).

20 News Corp Australia, *Submission 112*; Free TV, *Submission 109*; AMTACA, *Submission 101*; ASTRA, *Submission 99*.

21 AMTACA, *Submission 101*.

22 Guardian News and Media Limited and Guardian Australia, *Submission 80*.

this, they consider that there is ‘[s]ignificant potential for an harassment style of action or crime to significantly impact on bona fide journalistic activities’.<sup>23</sup>

15.23 Suitable defences would be needed for a harassment tort. The ALRC considers that in designing such defences, consideration should be given to ensuring the tort does not unreasonably affect responsible journalism on matters of public importance.

15.24 Describing the statutory harassment action as a tort action will provide certainty on a number of ancillary issues that will inevitably arise. However, further work would need to be done on the detailed design of a cause of action for harassment. The design of the statutory cause of action for serious invasion of privacy in this Report may provide some guidance on the design of a new harassment tort, as will harassment actions in other countries, discussed below.

### Uniform state and territory legislation

15.25 The ALRC recommends that the states and territories enact uniform legislation providing for a tort of harassment.

15.26 It is unclear whether the Commonwealth has the power to enact a general tort of harassment. The Commonwealth has the power to legislate with respect to communications made over the internet or other electronic communications—under the communications power in section 51(v) of the *Australian Constitution*. However, the Constitutional basis of a more general harassment Act—covering harassment which occurs ‘offline’—is less certain.

15.27 Although it is not clear, the Commonwealth’s external affairs power might also support a new Commonwealth harassment Act.<sup>24</sup> It may be argued that harassment constitutes ‘an arbitrary or unlawful interference with ... privacy, family, home or correspondence’,<sup>25</sup> under art 17 of the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a party. At its broadest, a person’s privacy could be considered to be interfered with by some forms of harassment. However, unlike surveillance (for example), harassment in general does not appear to be clearly recognised as involving interference with ‘privacy’ within the meaning of art 17 of the ICCPR. Article 17 has not been interpreted in General Comments of the Human Rights Committee, nor in case law, as involving protection from harassment.

15.28 By way of comparison, the sexual harassment provisions in the *Sex Discrimination Act 1984* (Cth) seem to be supported by the external affairs power through giving effect to provisions of the *Convention on the Elimination of all Forms of Violence against Women*.<sup>26</sup>

23 Ibid.

24 *Australian Constitution* s 51(xxix).

25 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

26 *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1980, 1249 UNTS (entered into force 3 September 1981).

15.29 The states may also refer matters to the Commonwealth under s 51(xxxvii) of the *Australian Constitution*.

15.30 If the Commonwealth were to enact a cause of action for harassment, the relevant statute might include a ‘reading down’ provision, to attempt to ensure the validity of the law to the extent it would operate in cases that are clearly within power. Another option might be for the Commonwealth to enact more limited causes of action for harassment. For example, a tort of harassment using internet or telecommunications technology would seem to be more clearly within the Commonwealth’s legislative powers.

### **Criminal offences for harassment**

15.31 This section outlines a range of Commonwealth, state and territory criminal offences for conduct that amounts to harassment. There appear to be some gaps in state laws, and it seems Commonwealth cyber-harassment laws could be clearer and more actively enforced.

#### **State stalking and harassment laws**

15.32 State and territory laws criminalise stalking. These offences often target behaviour amounting to harassment.<sup>27</sup> For example, under the *Crimes Act 1958* (Vic) s 21A, a person (the offender) stalks another person (the victim)

if the offender engages in a course of conduct [which includes any of a wide range of types of conduct] with the intention of causing physical or mental harm to the victim, including self-harm, or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.

15.33 There are also state and territory offences that capture harassment at work, in family or domestic contexts, and in schools and other educational institutions. For example, the *Crimes Act 1900* (NSW) s 60E provides that it is an offence to ‘assault, stalk, harass or intimidate any school student or member of staff of a school, while the student or member of staff is attending a school’.

15.34 Section 8(1) of the *Crime (Domestic and Personal Violence) Act 2007* (NSW) defines stalking as ‘the following of a person about or the watching or frequenting of the vicinity of, or an approach to a person’s place of residence, business or work or any place that a person frequents for the purposes of any activity’. This Act is confined to persons experiencing domestic or family violence.

15.35 Some types of serious harassment may not be caught by existing criminal offences. State and territory stalking offences, for example, are limited in their ability to protect individuals from harassment which does not involve the apprehension of actual violence. Stalking offences usually capture threatening conduct and require the

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27 *Criminal Code* (Cth) s 189; *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 13; *Criminal Code Act 1899* (Qld) s 395B; *Criminal Law Consolidation Act 1935* (SA) s 19AA; *Criminal Code Act 1924* (Tas) s 192; *Crimes Act 1958* (Vic) s 21A; *Criminal Code Act Compilation Act 1913* (WA) s 338D; *Crimes Act 1900* (ACT) s 35.

victim to apprehend actual violence or to fear harm.<sup>28</sup> However, persistent unwanted attention, communication or contact which does not meet this threshold could undoubtedly still cause significant harm and distress, and disrupt a person's life.

15.36 Differences between state and territory stalking offences may also undermine their effectiveness. For example, in many states, stalking requires a course of conduct covering at least two incidents,<sup>29</sup> but in Tasmania, stalking may be based upon one incident.<sup>30</sup>

15.37 Several stakeholders supported the consolidation and clarification of existing state and territory stalking criminal offences.<sup>31</sup> The National Children's and Youth Law Centre highlighted the need to 'address the gaps' in the current legal frameworks for cyber-bullying and harassment.<sup>32</sup> The Public Interest Advocacy Centre and Women's Legal Services NSW both supported a uniform approach to the criminalisation of harassment while cautioning against any consolidation process which may adopt a 'lowest common denominator' approach.<sup>33</sup> Uniformity in state and territory stalking provisions may deserve further consideration.

### Commonwealth cyber-harassment laws

15.38 Commonwealth law criminalises cyber-harassment, but does not provide for a general offence of harassment. The Commonwealth *Criminal Code*, set out in the schedule to the *Criminal Code Act 1995* (Cth), provides for an offence of 'using a carriage service to menace, harass or cause offence',<sup>34</sup> and 'using a carriage service to make a threat'.<sup>35</sup> These would capture conduct amounting to harassment, for example, via the internet, including social media, and telephone.<sup>36</sup> Examples of prosecutions under this offence include posting offensive pictures and comments on Facebook tribute pages;<sup>37</sup> posting menacing messages on Facebook;<sup>38</sup> and sending repeated menacing emails.<sup>39</sup> The maximum penalty under s 474.17 is currently three years imprisonment. The maximum fine is \$19,800 for a natural person and \$99,000 for a body corporate.

28 See for example, *Criminal Code Act* (NT) s 189(1A).

29 *Criminal Code Act 1899* (Qld) s 359A; *Crimes Act 1900* (ACT) s 35.

30 *Criminal Code Act 1924* (Tas) s 192.

31 Women's Legal Services NSW, *Submission 115*; Free TV, *Submission 109*; Public Interest Advocacy Centre, *Submission 105*; ASTRA, *Submission 99*; Australian Sex Party, *Submission 92*; S Higgins, *Submission 82*; National Children and Youth Law Centre, *Submission 61*.

32 National Children and Youth Law Centre, *Submission 61*.

33 Public Interest Advocacy Centre, *Submission 105*.

34 *Criminal Code Act 1995* (Cth) sch, s 474.17.

35 *Ibid* sch, s 474.15.

36 At the Bullying, Young People and the Law Symposium hosted by the Alannah and Madeline Foundation in Sydney in July 2013, delegates recommended that Australian governments introduce a specific, and readily understandable, criminal offence of bullying, including cyber-bullying, involving a comparatively minor penalty to supplement existing laws which are designed to deal with more serious forms of conduct.

37 *R v Hampson* [2011] QCA 132.

38 *Agostino v Cleaves* [2010] ATSC 19.

39 *R v Ogawa* [2009] QCA 307.

15.39 There are also Commonwealth laws to protect victims of family violence from harassment, including harassment via electronic communications. For example, stalking is included in the definition of ‘family violence’ in the *Family Law Act 1975* (Cth).<sup>40</sup>

15.40 Some have suggested that the Commonwealth criminal offences for cyber-harassment might be more actively enforced, and perhaps made clearer. At the time of writing this Report, the federal Department of Communications was conducting a review into online safety for children.<sup>41</sup> Among other issues, the Department has been asked to consider simplifying the meaning and application of s 474.17 of the *Criminal Code*, although some stakeholders have suggested the law is appropriate. For example, the Australian Federal Police said the section was ‘more than adequate to facilitate prosecution of cyber-bullying cases where appropriate’, and argued that ‘the breadth of section 474.17 is its strength, capturing a wide range of behaviours in a rapidly evolving online environment’.<sup>42</sup>

15.41 Some suggested that the law only needs to be more widely known or actively enforced, and that an education campaign might be necessary. Some commentators claim that, despite a high rate of parental reporting of cyber-bullying, there appears to be a lack of adequate knowledge or training about the applicability of the provision.<sup>43</sup> Facebook also supported education and awareness-raising measures to explain the application of the offence.<sup>44</sup> Google submitted that the problem ‘is not that the laws don’t exist, but rather that there is a general lack of awareness of the existing criminal and civil laws that are available’.<sup>45</sup>

15.42 Since the commencement of the relevant provision in 2005, and January 2014, there were 308 successful prosecutions under s 474.17 of the Commonwealth *Criminal Code* including eight prosecutions involving defendants under the age of 18.<sup>46</sup> The ALRC was advised by the Commonwealth Director of Public Prosecution that 74% of convictions were the result of referrals from state and territory police.<sup>47</sup> Only 22.6% of successful convictions were made by the Australian Federal Police. In consultations the ALRC heard concerns raised that state and territory police may be unwilling or unable to enforce criminal offences due to a lack of training and expertise in Commonwealth procedure which often differs significantly from state and territory police procedures.

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40 *Family Law Act 1975* (Cth) s 4AB(2)(c).

41 Australian Government, ‘Enhancing Online Safety for Children: Public Consultation on Key Election Commitments’ (Department of Communications, January 2014). The Government has founded an Online Safety Consultative Working Group to provide advice to government on online safety issues.

42 Australian Federal Police, *Submission 67*.

43 Aashish Srivastava, Roger Gamble and Janice Boey, ‘Cyberbullying in Australia: Clarifying the Problem, Considering the Solutions’ (2013) 21 *International Journal of Children’s Rights* 25.

44 Facebook, *Submission to Department of Communication’s Enhancing Online Safety for Children Report 2014*.

45 Google, *Submission to Department of Communication’s Enhancing Online Safety for Children Report 2014*.

46 Australian Government, above n 41, 21.

47 Advice correspondence, CDPP, 2 May 2014.



15.43 The Department of Communications outlined three options for reform to s 474.17. First, to retain the existing provision and implement education programs to raise awareness of its potential application. Second, to create a cyber-bullying offence with a civil penalty regime for minors. Third, to create a take-down system and accompanying infringement notice scheme to regulate complaints about online content.

### Harassment laws in other countries

15.44 The *Protection from Harassment Act 1997* (UK) creates criminal offences when a person engages in a ‘course of conduct’ that amounts to harassment.<sup>48</sup> It is an offence for a person to pursue a course of conduct which amounts to harassment of another and which they know or ought to know amounts to harassment.<sup>49</sup> Harassment is defined as having occurred if ‘a reasonable person in possession of the same information would think the course of conduct amounted to harassment’.<sup>50</sup>

15.45 Importantly, the UK Act also provides for the award of civil remedies, including injunctions and damages to victims of harassment. Courts are empowered to issue a civil non-harassment order. Where a person is convicted of the offence of harassment, a prosecutor may apply to the court to make a non-harassment order against the offender requiring them to refrain from ‘such conduct in relation to the victim as specified in the order for such periods may be specified’.<sup>51</sup>

15.46 New Zealand’s *Harassment Act 1997* empowers a court to issue civil harassment restraining orders and provides for a criminal offence of harassment where a person intends to cause fear to another person.<sup>52</sup> A person who is prosecuted for harassment can face up to two years imprisonment.<sup>53</sup> Plaintiffs can also apply to a court for a civil restraining order to prevent conduct amounting to harassment, breach of which will lead to penalties.<sup>54</sup> Where the Act does not provide for compensation for victims, the common law in New Zealand has developed a tort of intrusion upon seclusion, which has been used to provide compensation for victims of harassment.<sup>55</sup>

15.47 A range of behaviours amounting to harassment have been successfully targeted through the UK and NZ harassment acts.<sup>56</sup> These include conduct by individuals such as ‘trolling’ on social media, posting of private photographs and the use of fake online profiles to harass individuals.

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48 *Protection from Harassment Act 1997* (UK) ss 1, 2. The UK Supreme Court recently discussed the complexity in interpreting the Act: *Hayes (FC) v Willoughby* [2013] UKSC 17.

49 *Protection from Harassment Act 1997* (UK) s 1.

50 *Ibid* s 1(2).

51 *Ibid* s 11.

52 *Harassment Act 1997* (NZ) s 8.

53 *Ibid*.

54 *Ibid* s 9.

55 *C v Holland* [2012] 3 NZLR 672.

56 For example, cases of workplace harassment: *Majrowski v Guy's and St Thomas' NHS Trust* [2006] UKHL 34; aerial surveillance over private property: *Howlett v Holding* [2006] EWHC 41 (QB); restraining media and paparazzi from following individuals: *Thomas v News Group Newspapers Ltd* [2002] EMLR 78.

15.48 At the time of writing this Report, New Zealand's government was also considering legislation to tackle 'harmful digital communications' by way of the Harmful Digital Communications Bill 2013. If enacted, the legislation would prohibit an individual from sending a message to another person—for example by text, online publication or email—where the conduct of that message is grossly indecent, obscene, menacing or knowingly false, and where the sender intends the message to cause emotional distress to the recipient.<sup>57</sup> This offence would be punishable by up to three months imprisonment or a NZ\$2,000 fine.

15.49 Singapore's *Protection from Harassment Act 2014* criminalises stalking and other forms of anti-social behaviour. The Act provides for a civil action of harassment whereby plaintiffs can receive an award of damages. Courts are also empowered under the Act to issue civil protection orders against offenders and have the power to remove offending material from a platform such as the internet.<sup>58</sup>

15.50 Other jurisdictions have enacted legislation to specifically target cyber-harms and so-called 'revenge pornography'.<sup>59</sup> Revenge pornography is understood as the collection and distribution of sexually graphic images of an individual without their consent, with the deliberate intention of embarrassing, demeaning and distressing that individual. These images are often taken consensually during an intimate relationship.

15.51 For example, Nova Scotia's *Cyber-Safety Act 2013* creates a tort of cyber-bullying so that 'a person who subjects another person to cyber-bullying commits a tort against that person'.<sup>60</sup> Cyber-bullying is defined as using

electronic communication through the use of technology, including ... social networks, text messaging, instant messaging, websites and electronic mail ... typically repeated or with continuing effect, that is intended or ought reasonably to be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation.<sup>61</sup>

15.52 In an action for cyber-bullying under this Act, a court may award damages including general, special, aggravated and punitive damages.<sup>62</sup> A court may also issue an injunction,<sup>63</sup> or make an order that the court considers 'just and reasonable in the circumstances'.<sup>64</sup>

15.53 These laws provide a useful model for Australian legislatures when enacting a statutory tort of harassment, or other harassment legislation.

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57 Harmful Digital Communications Bill 2013 (NZ) cl 19.

58 Prior to the enactment of the *Protection from Harassment Act 2014*, the *Miscellaneous Offences (Public Order and Nuisance) Act* ch 184, ss13A–D criminalised offline harassment.

59 Eg, New Jersey legislation criminalises the reproduction or disclosure of images of sexual contact without consent: *NJ Rev Stat § 2C:14-9 (2013)*.

60 *Cyber-Safety Act*, SNS 2013, c 2 2013 s 3(b).

61 *Ibid.*

62 *Cyber-Safety Act 2013* (SNS) s 22(1)(a).

63 *Ibid* s 22(1)(b).

64 *Ibid* s 22(1)(c).