

# Harmful Digital Communications Bill

## A COSSD and DCLC Community Discussion Topic for Monday 10 February 2014

The Harmful Digital Communications Bill, nicknamed the “Cyber Bullying Bill” is currently open for consultation; submissions are due on Friday 21 February 2014. This Bill implements the Government’s decisions on addressing harmful digital communications, these decisions have been based on the Law Commission’s 2012 Ministerial Briefing paper *Harmful Digital Communications: The adequacy of the current sanctions and remedies*.

The rapid proliferation and increasing use of modern technology has led to new forms of harassment, the purpose of this Bill is to develop legislation to around digital communications which cause harm.

Harmful digital communications which includes cyber-bullying and digital harassment can take many forms and includes: e-mail communication, text messages, blog sites, online forums, and social media sites such as Facebook and Twitter.

Modern technology possesses a number of unique formats such as the potential for information, including damaging text, moving images or photographs to go “viral” to a worldwide audience. It can also be extremely difficult to remove information from the World Wide Web. Furthermore the digital medium can offer anonymity to the perpetrator of harmful communication.

Victims of harmful digital communications are often children and young people. Vulnerable adults have also been victims of harmful digital communications through the posting of unauthorised intimate photographs and moving image clips, as well as malicious text.

Modern technology is pervasive -- harassment and bullying can take place anywhere at any time and is no longer confined to a physical spaces, such as face to face harassment in the schoolyard. Perpetrators can harass their victims at anytime of the day or night via text messaging etc.

This Bill aims to lessen the harm caused to individuals by digital communications and to provide victims of harmful digital communications with a “quick and efficient means of redress” through the following means:

- It creates a new civil enforcement regime that includes appointing an approved agency to quickly and effectively deal with harmful digital communications,
- People will be able to take serious complaints to the District Court, which will be able to issue remedies such as take-down orders, and cease-and-desist notices.
- Clarification of the liability of website hosts (called a safe harbour provision)<sup>1</sup>

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<sup>1</sup> Explanatory Note: Harmful Digital Communications Bill

- Making it an offence to send messages and post material online with intent to cause harm, punishable by up to 3 months imprisonment or a \$2,000 fine
- Creating a new offence of incitement to commit suicide (where the person does not attempt to take their own life), punishable by up to three years imprisonment
- Making changes to relevant criminal and civil law to ensure they cover all forms of harmful communications, regardless of whether tormentors use “online” or “offline” means.
- Future-proofing the laws against technological advances, to ensure they remain relevant.

Sources: *Explanatory Note: Harmful Digital Communications Bill. and First Reading Harmful Digital Communications Bill*

### ***Questions for Discussion***

This community forum will pivot around three questions:

1. What constitutes a Harmful Digital Communication?

*Clause 19 Subclause (1)* of the Bill sets out the elements of the offence. The prosecution must prove that—

- the offender posted a digital communication with the intention that it would cause harm to a victim; and
- posting the communication would cause harm to an ordinary reasonable person; and
- posting the communication has caused harm to the victim.

2. Do the proposed remedies go far enough?

3. How do we educate and disseminate information on what is acceptable and not acceptable in the digital arena?

### ***Links for further reading***

Law Commission Work on Harmful Digital Communications

<http://www.lawcom.govt.nz/news/2013/11/law-commission-welcomes-harmful-digital-communications-bill>

**The meeting is 12 - 1:30 Monday 10 February 2014 at Dunedin Community House, 301 Moray Place, Dunedin. Full details are at <http://bit.ly/LUjqmS>**

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“This Bill also clarifies the law relating to the liability of internet content hosts for content they host but which is posted by third parties.

The purpose of this is to ensure that a content host cannot be held liable for content they host that is posted by another person, but which the host does not know about. This Bill contains a safe harbour provision stating that a content host is not liable for content they host, unless the content host has received a notice of complaint about the content, and fails to take reasonable steps to remove it.”