



**Response to Online Thuggery  
Proposed New Laws Against Humiliating and Degrading Filming  
Discussion Paper January 2012**

Provided by the  
Youth Affairs Council of South Australia Inc.

The Youth Affairs Council of SA (YACSA)  
was established by the youth sector in 1980  
and is the peak body representing the views and interests  
of young people and the youth sector in South Australia.

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## **Introduction**

The Youth Affairs Council of South Australia (YACSA) is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA's aim is to encourage young people, and those working with them and for them, to achieve meaningful improvements in the quality of young people's lives.

Having made a previous submission to the Attorney-General's *Online Thuggery Discussion Paper*, YACSA welcomes the opportunity to provide specific comment on the draft *Summary Offences (Filming Offences) Amendment Bill 2011*.

## **Young People in Context**

In any discussion of public policy, young people can often be excluded or marginalised from decisions that affect them. While young people are expected to assume many responsibilities in our society, the same society can devalue their contribution and fail to recognise their position as stakeholders in civil, political, economic, social and cultural life, simply because of their age.

Young people are often seen as "adults in the making," which suggests they are somehow less capable, less insightful, less intelligent and less valuable than adults. This gives rise to the notion that young people are unable to make proper decisions or contribute in a meaningful way until they are older. This is especially the case for young people experiencing social disadvantage, whose voices are rarely heard in political debate, and whose issues and interests may be ignored or even denounced for political gain.

YACSA asserts the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly decision-making processes which impact them directly. Young people's involvement in society is vital in ensuring the development of relevant, forward-thinking and representative policy, programs, actions and services. As we have made clear in our previous submission, and elsewhere, young people are the experts in their own lives, and it is to young people decision-makers should turn when considering solutions to the problems young people face.

## **Definitional Issues**

In Part 5A, Section 26A of the draft Bill, under the Interpretation, a humiliating or degrading act (in relation to a person) is defined as:

*"...an act that reasonable adult members of the community would consider to be humiliating or degrading to that person (but does not include an act that reasonable adult members of the community would consider to cause only minor or moderate embarrassment)..."*

Whereas other legislation makes reference to "members of the community" when outlining the reasonable person test, in this draft Bill the Government has deliberately included the words "adult members of the community." This negates the views of young people entirely, in a piece of legislation that is ostensibly about protecting young people. It immediately dismisses the thoughts and feelings of any young person who may have been subjected to what they considered humiliating or degrading treatment, irrespective of its appearance to others.

For example, a young person may be subjected to an act that an adult may consider to cause "only minor or moderate embarrassment," but if that act represents the culmination of an extended, incessant period of bullying or victimisation, it may in fact have a more profound impact on that young person than a single, more serious incident.

Furthermore, the definition completely fails to recognise a vital truth about young people: they do not exist in a vacuum. In fact, people of all ages are now more than ever encouraged to digitise and distribute elements of their lives, mainly through positive engagement with social media such as Facebook and Skype.

Young people have always been at the forefront of new technology, using it to push boundaries, explore their own sense of identity, and build connections with others. It is only logical that the issues and influences they face in their life and in the world around them will find some way of manifesting in their behaviour and use of technology.

For example, familiarity with violence and violent images is an unfortunate fact of life for young people, whether through fictional or stylised violence in popular culture, or images of actual violence in news bulletins. Television shows such as "Funniest Home Videos" show violence and injury to others as something to be laughed at and shared – uploading a video to YouTube is a natural extension of this pre-existing phenomenon. Using technology to send intimate pictures is, again, a natural extension of the pre-existing desire to express romantic feelings and build relationships.

As such, the draft Bill will criminalise what many young people would consider relatively normalised activities, or if not normalised, at least extremely prevalent – filming and distributing a “funny” video depicting violence, or “sexting” a romantic partner. Therefore, if this Bill becomes law, it must be accompanied by a comprehensive, fully funded education program focusing on young people’s legal obligations in this area.

With regard to the definition itself, the most precise definition will be determined by what *young people* consider humiliating or degrading, regardless of how any act may appear to an adult member of the community without the specific knowledge and cultural awareness of young people’s actions and sensibilities. Taking this into consideration, the definition as it currently stands is completely inappropriate.

Instead, YACSA would suggest that the definition of a humiliating or degrading act be changed to:

*“...an act that reasonable members of the community would consider to be humiliating or degrading to that person, or which the person being subjected to that act considers humiliating or degrading.”*

YACSA considers this to be a fundamentally necessary change to ensure the integrity and suitability of the draft Bill for its intended purpose, and cannot support the Bill without the current definition being altered.

### **“Educate, don’t legislate” – An Alternative Approach**

Though making the definitional change outlined above would be an important step towards improving this specific draft Bill, YACSA still maintains that legislative responses focusing on the “online” element of “online thuggery” through punishment, monitoring and restriction fail to address the root causes of the behaviour that is being legislated against, and are therefore likely to be less effective than alternative, education-based approaches.

In advocating for this “educate, don’t legislate” approach, YACSA notes that our previous submission regarding the draft Bill highlighted at least six pieces of existing legislation that could be applied to a person who films and/or distributes humiliating or degrading images of another person.

We therefore suggest once again that instead of creating new offences, the Government conduct a systematic review of current laws to assess their relevancy in the light of advances in technology. This review should be conducted with the specific intent of updating current legislation to deal with the issue of the recording, broadcast and/or distribution of film of assaults or bullying, especially through the inclusion of additional sanctions for such actions within the context of each piece of legislation.

In saying this, we acknowledge that some of our members were not opposed to purpose-built legislation which is designed to address new offences as they evolve, rather than having sole recourse to older legislation that did not consider such offences within their original scope. However, in general YACSA is in favour of a review of existing legislation, to assist in clarifying the legal provisions currently in place for dealing with a new and emerging trend.

In addition, YACSA would suggest that extensive, academically rigorous research and consultation must be undertaken with young people to discover and analyse the reasons they may film attacks or distribute intimate images of themselves. Investigating the motivations behind young people's actions will allow for more effective, evidence-based policy and legislative responses, rather than the current situation in which adults are reacting to behaviour they may not fully understand, and which in many cases can be quite confronting and frightening.

This research and consultation process should also include an examination of how young people actually find out about laws and their legal obligations. Following the outcomes and information gathered, YACSA would advocate for a detailed and comprehensive education program to be provided to young people regarding the laws under which they may currently be prosecuted for filming unlawful degrading treatment or humiliating a person by distributing intimate pictures or film.

At the same time, YACSA would advocate for additional education for young people and the broader community about the importance of identifying, naming and reporting bullying and violence whenever and wherever it occurs.

Coupled with a focus on the principles of restorative justice – ensuring the offender understands the nature of their crime and its impact on their victim, and commits to undertaking restorative efforts – this education-based approach would arguably result in more entrenched and widespread modification of behaviour than the legislative response presented by the draft Bill. YACSA would further argue that it is the Government's role to be the catalyst and funder of these communication and education strategies.