

PEER ABUSE AS A LEGISLATED CHILD PROTECTION ISSUE FOR SCHOOLS

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Bullying or peer abuse is now recognized as an endemic feature of school life and efforts are being made to comprehensively address the issue at the school level through policy and curriculum development as well as individual interventions. Recent child protection legislation in NSW has raised significant ethical and professional issues involved in determining responses to peer abuse. It may be timely to consider such abuse as a child protection issue for schools given the well documented long-term impact of the behaviour. The proclamation in December 2000 of the Children and Young Persons (Care and Protection) Act 1998 (NSW), mandates early notification of all forms of abuse, and increases both the level of responsibility and liability for litigation of teachers and schools for failure to offer the appropriate level of protection to victims. This paper discusses the evidence available in the literature that peer abuse correlates closely with child abuse in terms of social and psychological characteristics, impact and outcomes. It explores the application of the NSW legislation specifically to the abuse of children and young people by their peers, and the responsibility of teachers under this law to provide protection for victims. A case study is discussed describing recent litigation against the Department of Education and Training in NSW which serves to illustrate that severe peer abuse fits the definitions and applications of the Act. It is suggested that early invocation of the child protection process prescribed may help avoid litigation in future but more importantly could provide early protection for victims of serious peer abuse

I INTRODUCTION

Few researchers have addressed the issue of bullying in the context of child protection or abuse. However, the issue of whether bullying constitutes abuse is beginning to have some currency in the literature (Dawkins, 1995; Healey 2003a; Kampulainen et al., 1998) and indications are that the critical defining features of child maltreatment by adults are also applicable to peer abuse. Portwood (1999) explores the possibility of a consensual definition of child maltreatment by examining the diverse parameters offered by a range of professional groups involved in intervention with such children. Legal, health, education and community practitioners include descriptors such as harm or the threat of harm, intention of the perpetrator and negative outcomes for the abused individual as factors by which behaviours can be classified as abusive. While Duncan (1999) suggests that bullying is often viewed by society to be at the 'milder end of the trauma spectrum' and that it is viewed as 'merely a bothersome part of a normal childhood', this view cannot be sustained given that bullying behaviours clearly fit the parameters of other abusive actions on a number of dimensions including long and short term impact, psychological and physical harm, illegality and incidence. In defining either peer abuse or the more commonly acknowledged abuse of children by adults, the similarities are far more noteworthy than the differences. Not only are the actual behaviours often the same, there is ample evidence that peer abuse can have equally as serious and permanent repercussions as other forms of abuse (Ambert, 1995; Olweus, 1993; Portwood, 1999). It is argued here that since educational personnel and settings are legally implicated in child protection provisions, school bullying or peer abuse cannot be excluded from the legislative requirements to protect children and young people. Close correlations between peer abuse and

child abuse in terms of the defining characteristics, impact and outcomes are identified and a case-study is presented of severe peer abuse which resulted in recent successful litigation against the NSW Department of Education. This is done in order to establish the legitimacy of applying mandatory reporting processes to the issue of bullying or peer abuse. A hypothetical application of the NSW legislation to this case is explored, since the events pre-dated the most recent legislation. A brief review of relevant Australian and international legislation offers supportive evidence of the viability of the proposition. Finally, the relative merits of specific anti-bullying legislation are examined along with some ethical, legal and professional issues in the application of the child protection legislation to this form of abuse.

II PEER ABUSE AS CHILD ABUSE –DO CHARACTERISTICS CORRELATE?

Child abuse is comprehensively dealt with in the literature as having negative psychological and socio-emotional impact and implications for development (Finkelhor and Korbin, 1998) and it is difficult to differentiate these outcomes from those identified as resulting from peer abuse or bullying (Rigby and Slee, 1993). Certain characteristics of abuse are common to both bullying (peer abuse) and child abuse which is often perpetrated by known and trusted adults. Included in these are the types of behaviours endured, the psychological impact of the abuse, the power relationship between victim and abuser, the availability of support structures within the social milieu of the victim and access to professionals who can intervene on their behalf. It is evident that were the same criteria to be applied to peer abuse as to the abusive behaviours observed, reported and suspected under child protection provisions, there would be little doubt about their congruence.

Child abuse is defined similarly in Australia and overseas and recurring themes related to the impact, outcomes and prevalence of abuse indicate close correlations with peer abuse (Roscoe, 1990). In terms of the types of behaviours endured, their intensity, frequency and psychological impact, peer abuse can be shown to parallel other forms of abuse (Ambert, 1998; Portwood, 1999) which are more usually notified under child protection legislation. The non-accidental nature of the injury, the power relationships between the victim and the perpetrator, although not as obvious between ‘peers’, and the harm or threatened harm which characterises peer victimisation equates to child abuse on all levels of analysis. Not only are the actual behaviours often the same, there is ample evidence that peer abuse can have equally as serious and permanent repercussions as other forms of abuse.

Rigby (1996), indicates that the general health of self reported victims of bullying is significantly poorer than that of non-victims with many psychological effects reported including lost sleep due to worry, constant strain and feeling worthless. Victims of bullying have been reported to exhibit higher rates of depression (Duncan, 1999), withdrawal and suicidal thoughts in response to the abuse (Prewitt, 1988; Rigby, 1996) and to experience emotional disturbances such as anxiety, panic, loneliness and rejection. Others report that victims feel humiliated, ashamed and degraded by the rejection they endure (Besag, 1989; Olweus, 1999) and develop introverted and socially avoidant behaviour (Rigby and Slee, 1993b). Furthermore there is evidence of long-term impact and the potential for difficulties in interpersonal relationships in adult life as a result of bullying in childhood (Doll and Lyon, 1998). Duncan (1999) describes a retrospective study in which 46% of college students reported frequent flashbacks to childhood bullying even as young adults, while Matsui, Kakuyama, Tsuzuki and Onglatco (1996) found continued depression and low self esteem in Japanese males victimised as children. Bullying increases the likelihood of

psychiatric referral and is correlated with clinical psychological disturbance (Kumpulainen et al., 1998).

Emotional abuse described in the child abuse literature impacts on the psychological functioning and well being of children and includes: 'acts of rejection' (Rutter, 1993), 'spurning, terrorizing, isolating, exploitation and denial of emotional responsiveness (sic)' (Hart & Brassard, 1991) and the repetitive, sustained nature of the behaviour is a definitive feature (Kent and Waller, 1998). Bullying or peer abuse is similarly described as involving 'repeated taunting' (Munthe, 1989), 'put downs, insults, laughing and gesturing in derogatory ways', 'social exclusion and demeaning' (Ambert, 1995; Neary and Joseph, 1994), all of which behaviours would be acknowledged as abusive if conducted by an adult against a child. Hodges and Perry (1996) confirm that peer abuse has the effect of causing depression, low self esteem and avoidance of school, while Olweus (1995) and others (Morita, Harud, Haruo and Taki 1999 ; Tattum 1993) also found elevated levels of depressive tendencies and poor self esteem which continued into young adulthood in victims of peer abuse. This is also a defining feature of child abuse (Finkelhor and Hotaling, 1984; O'Toole, Webster, O'Toole and Lucal, 1999). Physical peer abuse can lead to suicide (Byrne, 1993; Dueholm, 1999; Smith, 1999.). Indeed historically, the issue of peer abuse was first brought to international attention with the suicides of three 10-14 year old boys in late 1982 in Norway, in all probability as a consequence of bullying (Olweus, 1993). The development of fear, anxiety or withdrawal in victims are all reported as outcomes of severe peer abuse just as they are reported in the child abuse literature. Psychopathology and future criminal behaviour are also implicated in both peer abuse and child abuse paradigms in reference to the prognosis for the victim or the perpetrator (Kent & Waller, 1998; Spatz-Widom, 1995).

Acts of harm or threatened harm or omissions which expose the child physically, emotionally or morally (Portwood, 1999; Roscoe, 1990) are generally used to define abusive behaviours. The injury must be non-accidental and the concept of intentionality is therefore paramount. Furthermore the acts must be observed or permitted through omission to be inflicted or threatened (Hodges and Perry, 1996). Teachers can be considered responsible for both appropriate identification of the behaviours observed (as abusive or bullying) and for intervention. If child abuse can be defined as acts which are perpetrated, tolerated or facilitated by adults then peer abuse which has been observed but for which no intervention has been forthcoming, would certainly fit the category of abuse. It is therefore clear that the abuse of children by their peers when known to or observed by teachers, implicates these professionals in terms of child protection mandates. Not only must peer abuse be recognised as child abuse, it must be acknowledged as such by mandatory reporting.

Ambert (1995) suggests that peer abuse is seen to differ from other forms of abuse on three key factors—the age of the perpetrator, formal power distinctions and neglect—which she believes are the factors which are generally used to diminish the impact of the behaviour. Since the abuse is undertaken by minors, the effect may therefore be viewed as minor since there is no recognised power differential, no abusive relationship is identified and since peers are not responsible for their age mates, neglect cannot be attributed to them. It is apparent, however that these arguments are fast losing their credibility as the impact of peer abuse is documented and the legal responsibilities of teachers and other carers is challenged. This confluence of symptoms and outcomes between peer and child abuse supports the proposition for equivalence in intervention. Barnett, Manly and Cicchetti, (1993) delineate six dimensions on which child abuse can be identified and analysed comprising: type of abuse, severity, frequency, developmental stage interventions and perpetrators. Peer abuse can also be measured and analysed on each of these dimensions providing a comprehensive picture of its similar aetiology to other forms of

child abuse and its correspondence with child abuse across types, severity and impact. Teachers therefore who are aware of seriously abusive peers but who do not follow mandated procedures for the reporting of the behaviour may well be in breach of the legal and professional guidelines under which they are employed.

Peer abuse may be perpetrated by age peers, by older social contacts such as the friends of older siblings (Ambert, 1995), or students in higher year levels at the same school (Healey, 2001; Rigby and Slee, 1993 b). Children are generally vulnerable and have few choices about with whom they associate, particularly during the school day and travelling to and from school when peer abuse often occurs (Healey, 2001; Smith, 1994). Peer abuse is facilitated by both the restricted range of social contacts for young people and by social structures which ensure that age peers spend the majority of their time together. Peer abuse is often differentiated from other forms of child abuse on the basis of the developmental and social status of the perpetrator. Peer abuse is often not differentiated however from other forms of aggressive interactions between peers which result from mutual conflict. It is clear that peer abuse, as with other forms of abuse, depends upon a difference in social status or power of the abuser compared to the victim, even though there may be no obvious power difference between the victim and their age-mate abuser (Marsh, Parada, Yeung and Healey, 2001). In peer abuse the power does not reside necessarily in the physical size difference between the bully and victim, although some researchers have identified inferior physical development as a factor in bullying victimisation (Olweus, 1993). Rather, it is perceived social position and status which bullies use to their advantage (Espelage, 2003; Rigby, 1996). On each of these dimensions peer abuse can be seen to correlate with child abuse. The capacity of peers to abuse their age mates is not questioned, rather it is the failure to interpret this behaviour as abusive and the subsequent responses of teachers in terms of their mandated responsibilities to report the abuse, which is examined here. While it is apparent that peer abuse or bullying unquestionably fits the definitions and parameters of child abuse, there still seems to be some doubt about the application of the mandated legal processes in respect to intervention in peer abuse.

In this discussion of peer abuse, however it is suggested that notification is mandated by the *Children and Young Person's (Care and Protection Act) 1998* (NSW), protective legislation which states that all forms of suspected or reported abuse of children must be passed on for further investigation and intervention. What remains as a key is for teachers to be professionally as well prepared in the recognition of indicators of severe bullying as they are of other forms of child abuse and for them to accept their responsibility to extend their child protection duties to this issue. The phenomenon of peer abuse must therefore now be viewed in the more serious context of child abuse and an effort made to raise to the conscious awareness of teachers and others with responsibility for the protection of children that peer abuse fits within the child protection framework. The relevant legislation and sanctions must be applied.

III CASE STUDY OF SEVERE PEER ABUSE - COULD THE CHILD PROTECTION LEGISLATION HAVE PROTECTED THIS INDIVIDUAL?

A recent case in NSW reinforces the possibility of applying the legislation in cases of severe peer victimisation in schools. The case, argued through private litigation, illustrated the extreme impact of abusive peer behaviour and may act as a cautionary indicator to professionals. Evidence for the claimant was tendered that the victim had been severely abused by peers on numerous occasions often resulting in serious physical harm. He was systematically physically and psychologically abused throughout his high school education and as a result developed severe anxiety, depression

and migraine headaches. Incidents described in evidence included being thrown against a wall causing concussion, having garbage forced into his mouth, being pushed to the ground, punched and kicked and being persistently verbally abused. The victim suffered concussion on three separate occasions each resulting in hospitalisation. He had a seizure at school following one such incident.

The victim became withdrawn and depressed, his academic progress deteriorated and he eventually found it necessary to leave school. Evidence suggested that while 'bullying' was suspected the incidents were invariably interpreted as 'fighting' and described as such in critical incident reports completed by teachers. Despite consistent school reports that the victim was a compliant and quiet student with a minor speech impediment, unlikely to involve himself in physical altercations, teachers failed to identify the incidents as abusive even though they clearly fitted the definition of peer abuse in that they were ongoing and frequent. The error of interpretation, it is suggested, was in seeing each of the incidents as a separate assault rather than as part of an ongoing and systematic process of peer abuse. The same criteria would not usually be applied in the case of child abuse by adults where a record of incidents would become a cumulative indicator of abuse and would be unlikely to be viewed as unrelated. The case settled out of court and, as such, there is no judicial consideration of the evidence, nevertheless it serves to illustrate the failure of the pre-1998 child protection legislative provisions to offer protection from ongoing and severe abuse perpetrated by peers. It also demonstrates the incapacity of teachers to differentiate bullying as abuse rather than conflict and indicates a need for further teacher education and training in processes.

It is important to state that the current processes for protecting young people from all types of abuse were not available to the teaching staff at the time of the incidents since the peer abuse occurred prior to 1998. They were mandated under the previous legislation to report only suspected or disclosed sexual abuse. The proposition offered here is that had the current processes been in place, this student could have been spared many days, if not years, of misery and harm by implementing child protection procedures in his defence. Had protective processes been available and applied in this instance, they would have afforded this individual early protection.

As the Act is currently documented, the victim could have been supported for investigation and intervention in the categories of physical and emotional abuse, which may have precluded the private litigation. As it stands, schools do not notify peer abuse for investigation by statutory authorities under the new legislation. Nevertheless should this process be extended to the issue of peer abuse, teachers would be viewed as responsibly undertaking their duty of care and schools would surely be less likely to be open to charges of neglect.

IV APPLYING CHILD PROTECTION LEGISLATION TO PEER ABUSE CASES

Child abuse issues were afforded a high profile in NSW schools in the wake of the Wood Royal Commission (1996). The Wood Report (1997) implicated a number of educators in child abuse matters and resulted in prosecution and incarceration for some on the basis of failure to notify suspected cases of abuse of children and young people in their care. In 1998, in NSW, the then Department of School Education instituted a review of procedures for reporting child abuse. This extended regulations previously applying only to sexual abuse notification, to require that all suspected or reported forms of abuse of children and young people be appropriately notified. This was in response to a review of the *Children (Care and Protection) Act 1987 (NSW)* which originally nominated teachers as mandatory notifiers of child sexual abuse. The review

resulted in the enactment of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), which extended the legal obligations of mandatory reporting to a much broader range of professionals working with children and included a wide range of forms of abuse. The focus of the Act, proclaimed in December 2000, is the provision and maintenance of protective services to children in abusive situations with an emphasis on preventative intervention. Retraining of all teachers in NSW, in the area of child protection, was undertaken during 1998 and a commitment made to ensuring the suitability of candidates for teaching and employment, using the Prohibited Persons Register introduced prior to the reviewed Act. Changes to the processes for identifying abusive colleagues, as well as children and young people experiencing abuse inside or outside the education system, were put in place and teachers left with no doubt that inappropriate interactions with students and failure to protect them from the same, would have serious legal implications. Further protective measures were instigated as an outcome of the Wood recommendations with the enactment of the *Commission for Children and Young People Act 1998* (NSW) and the *Child Protection (Prohibited Employment) Act 1998* (NSW).

In relation to peer abuse, however, data are not generally available regarding reporting and legal interventions under child protection provisions, since the phenomenon has rarely been acknowledged or recorded in the child abuse statistics. There is little research or evidence that peer abuse is recognised as a form of child abuse or that legal provisions are used in this way to protect children. However, in Australia, most states and territories mandate reporting of child abuse on the basis of ‘reasonable grounds to suspect’ that abuse is occurring and in some states the legislation could be applied in the case of severe peer abuse. The recent NSW legislation clearly prescribes the responsibility of professionals involved in children’s services as ‘protective’.

The definitions of abuse incorporated into the NSW child protection legislation are, it is suggested, broad enough that almost any harmful act towards a child or young person could be included and it could therefore be applicable to peer abuse. Peer abuse has been the subject of legal action in Australia and overseas, although not through child protection provisions. The NSW Act also defines both children and young people by age (child as a person under the age of 16 years and young person as between 16 and 18 years) which permits application at both the high school and primary school levels. Peer abuse is well documented at both systems levels (Healey 2001(a); Rigby and Slee 1993). It is therefore suggested that knowledge of systematic, frequent and harmful abusive behaviour by peers unquestionably implicates teachers in notification under these legislative guidelines. *The Children and Young Persons Act 1998* (NSW) S8(b) states: ‘that all institutions responsible for the care and protection of children and young people, provide an environment for them that is free of violence and exploitation and provide services that foster their health, developmental needs and dignity’. Additionally, S9(a) of the Act states that the principles to be applied in the administration of the Act are as follows: ‘in all actions and decisions made under this act, (whether by legal or administrative process) concerning a particular child or young person, the safety, welfare and well-being of the child or young person must be the paramount consideration’. In terms of decision-making with regard to reporting peer abuse, therefore, it could be argued that teachers are mandated to consider this aspect of the child’s safety under this law. Further, S23 of the Act states that a child or young person is at risk of harm, ‘if current concerns exist for the safety, welfare or well-being of the child or young person’ because of the presence of such circumstances as ‘the child or young person’s basic physical or psychological needs (are) not being met or are at risk of not being met’ and ‘the child or young person has been, or is at risk of being physically or sexually abused or ill-treated’. The specific obligation to notify contained in S27 of the Act further states that where a person to whom this section applies has

reasonable grounds to suspect that a child is at risk of harm' and 'those grounds arise during the course of or from the person's work' that person must make a report as soon as practicable. It is clear that these mandates cannot be ignored in the case of severe peer abuse when the criteria for risk and harm are met and documented. Bearing in mind that definitions of bullying refer to an ongoing abusive process, not a single incident of assault, peer abuse fits the criteria for sustained and current concerns for welfare and safety. Since the NSW Act mandates that all persons listed, including teachers, must report the concern as soon as practicable there seems to be no reason to exclude the abusive behaviours of peers from this directive. The onus of proof, as stated in the legislation, is irrelevant to notification. This provision applies in all situations where a crime is suspected—the individual reporting the crime does not have to provide 'proof' since they are simply notifying the authorities of a situation requiring their attention. Teachers and others are being asked to do no more with regard to this 'crime' than all community members are expected to do in relation to any suspected crime—that is to report their suspicions to those with the authority and expertise to investigate.

Teachers who report suspected abuse in good faith are protected from prosecution for defamation, for example, under the legislation via S29 of the Act. Further, the use of the mandated provisions in the case of peer abuse may well help prevent legal proceedings being taken against schools and teachers who are seen to have failed to protect their students from peer abuse, or to have misinterpreted the behaviour. Teachers need to be informed that while they cannot be sued for reporting abuse they suspect or know is occurring, they can be prosecuted for failing to report known instances of abuse. This may well apply, it is submitted, to peer abusive situations. In the case of peer abuse, moreover, teachers often do have extensive documentation, formal and informal observations of abusive interactions whereby individual children have been exposed to harm by their peers. Peer abuse is often known to teachers, though rarely identified as 'abusive', and this implicates teachers in terms of child protection mandates. Schene (1998) suggests that the protection of children has been established historically as a government function and, it is argued here, since more children may be at risk from their peers than abusive adults, protection must now be extended to include peer abuse as a legislated child protection issue.

In some other states of Australia, too, it is possible that legislative provisions are broad enough to cover peer abuse within the scope of abuse required to be reported. South Australian legislation, for example, uses phraseology which could also readily be applied to cases of peer abuse in that intervention can be undertaken when, 'there is some information or evidence leading to a reasonable suspicion that a child is at risk' See the Children's Protection Act 1993 (SA) S20. Abuse is defined to include 'physical or emotional abuse of the child ... to the extent that ... the child has suffered, or is likely to suffer, physical or psychological injury ... or the child's physical or psychological development is in jeopardy' (S6). In Victoria, the Children and Young Person's Act 1989 legal requirements relate to the reporting of physical injury (S63) but the relevant professional must report abuse only when they have 'form[ed] the belief on reasonable grounds' that abuse is happening (S64). This rider permits, perhaps, an element of judgment or discretion enabling the observer to opt out of reporting if they claim not to believe the indicators presented, including disclosure. In one case heard under these Victorian guidelines, although the child was subsequently found to have been abused, the prosecution for non-reporting was unsuccessful because it could not be shown that a belief was formed (Swain, 1998). In this situation, peer abuse may be far less likely to be viewed as a child protection issue but, it is submitted, the legislation does not preclude this application. In Victoria, however, remarkably, the amended Crimes (Family Violence) Act 1987 stalking provision (S21A (2)) has been implemented in over 600 cases

between children as a means of addressing the problem of victimisation (Coate, 2001). This law is being used, it could be inferred, to seek protection in a way which was never considered at its inception, clearly indicating a need to formalise legal intervention for peer abuse. Coate expresses some concern that the law has been applied to peer abuse situations, and prescribes mediation and other conflict resolution interventions instead. However, given the long term impact, children and young people are entitled to the same rights to protection under the law as adults in abusive situations and legal provisions ensuring personal safety must be extended to young people who are at risk. Further, conflict resolution has been demonstrated to be a most inappropriate method for dealing with either abusive adult or peer relationships (Healey, 2001). Conflict resolution processes are only relevant in situations where there is equivalence between the protagonists as each attempts to secure their own needs, usually at the expense of the other party. Just as it would be inappropriate to suggest that abused women, for example engage in ‘conflict resolution’ with their abusive partners, so it is inappropriate to suggest this intervention in the case of severe bullying (Watson, 1998). Bullying is not about conflict—bullying is about abuse. In instances of abuse what is required is protection, not negotiation with the perpetrator.

Generally, private litigation for neglect of duty is sought when parents and individual students believe they have been poorly served in terms of safety and protection at school. Increasingly, reference is made to children’s rights to protection from harm (Anderson and Fraser, 2002) freedom of association, adequate educational and safety provisions when issues of peer abuse arise. Legal intervention is considered usually only when the school system is deemed to have failed to provide adequate protection. Reluctance to become involved may stem from an inaccurate understanding by teachers of their legal responsibilities for child protection and in particular their resistance to defining peer abuse as either serious or abusive or related to child protection. Protections under the law for reporting according to mandated provisions will hopefully assist in the acceptance of peer abuse as a phenomenon requiring serious professional attention and early intervention in the context of legislated child abuse provisions.

V PROFESSIONAL AND ETHICAL ISSUES IN REPORTING PEER ABUSE

A range of ethical and professional issues can be identified as discouraging the use of the legislation for the purpose of reporting peer abuse, yet it must be noted that reticence to offer this form of protection to children who are abused by peers is professionally questionable. A case can be made for the inclusion of peer abuse under the scope of child protection legislation in order to provide appropriate and immediate intervention for victims and professional protections for teachers, but further professional preparation is necessary to ensure implementation as well as a genuine commitment to the reduction of peer abuse in school settings. Specific and community-endorsed provisions already exist for the protection of children and young people from abuse, so the proposal that this should be applied in the case of peer abuse should not be too challenging, given the impact of peer abuse. The protection and safety of students in relation to their peers must be paramount and legally supported.

Fundamental to the concept of ‘professionalism’ are notions of specialised knowledge, ethical standards and practice and autonomy. In acquiring professional qualifications and recognition practitioners across all fields have the expectation that the judgments and decisions they make under these auspices have been pre-validated. The ethics and standards proclamations of a variety of professions involved in child protection delineate strict expectations for the maintenance of privacy, and adherence to protective organisational procedures. These have been devised to ensure that within this framework the decisions taken will be legitimate, have positive outcomes

for clients, and not be unnecessarily restrictive. For some individuals, however, mandatory notification poses a significant challenge to their professional self-regard and indeed evidence is emerging that the removal of discretionary reporting has resulted in under-reporting (O'Toole et al., 1999). A number of factors contribute to the disinclination of mandated reporters to follow legislated and professional guidelines for reporting suspected child abuse and further factors are insinuated when peer abuse is included in the abuse spectrum. These factors include definitional variations and parameters with regard to child abuse and bullying or peer abuse. The major determining factor seems to be a reluctance to view bullying as abusive, and for this reason the use of the term 'peer abuse' in preference to bullying may begin to address definitional concerns. There is also some resistance to, and exclusion of, indicators based on misinterpretations of behaviours. For example, bullying is sometimes interpreted as something other than abuse, such as 'fighting'. They also include indecision about the level of seriousness of the abuse; beliefs and experience related to the impact and outcomes of reporting, especially if fellow professionals are implicated; sociological concerns for the dichotomy of protection for the child versus family and social group cohesion; and the dilemma of removal of the child from the abusive situation versus in situ support and remediation for all concerned, including perpetrators (Sheerin, 1998).

Nevertheless, intervention should be predicated on the impact and seriousness of the abuse, not the developmental profile of the abuser. It is not suggested that every incident of peer abuse can be addressed using the legislation. Indeed, with the introduction of recent anti-bullying policy guidelines in the NSW education system, there is an expectation that all schools will establish and maintain effective interventions for peer abusive behaviours and the need for more serious legal intervention may well be prevented by this requirement. Schools are actively seeking advice and direction on the introduction of research-based customised bullying intervention procedures (Healey, 2003b) which should provide adequate protections for students. Nevertheless, serious and harmful incidents may still occur and in these cases the application of the protective legislation provisions ought to be considered.

A socially and economically rational approach dictates that some means of differentiation be established by which to measure the relative impact and outcomes for individuals and by which to allocate a share of the intensive interventions and support available through these processes to the problem of peer abuse. The legislation devised for child protection in NSW establishes a system of interagency supports which should be utilised to protect children and young people from peer as well other sources of abuse. However, with minimal professional preparation in the recognition of either broadly defined child abuse, specifically defined peer abuse (O'Moore, 2000; Watts and Laskey, 1994), or the relevant legislated mandates, teachers in particular, but also, doctors, lawyers, counsellors and other professionals, may be better equipped to determine whether there has been abuse. Obviously then with peer abuse, the main problem is raising the consciousness of teachers to the point where abuse is suspected in instances which may not previously have led to this conclusion, in particular in relation to peer interactions. Beliefs and experience relating to the impact and outcomes of reporting also pose an ethical dilemma for teachers. In invoking the child protection procedures, teachers are concerned at the repercussions for all parties—the abused child, the alleged perpetrator and themselves as reporters. Irrespective of the fact that mandated processes preclude such considerations and guarantee anonymity and protection from prosecution, O'Toole et al. (1999), report that professionals including teachers doubt the efficacy of reporting, judge the effectiveness of agency interventions as poor and fear legal action. However, they seem to overlook the possibility of litigation against themselves for failure to report abuse.

Countries such as Finland (Bjorkvist and Osterman, 1999) Japan (Morita et al., 1999), the United States of America (Haratchi, Catalano and Hawkins, 1999), and Sweden (Olweus, 1999) have enacted specific legislation against bullying which can lead to prosecution of the perpetrators. Other countries use existing legislation to deter and punish peer abuse as it is not seen as a distinct offence. In Canada, for example, legislation governing young offenders is often used to deal with cases of bullying (Anderson and Fraser, 2002). Such legal provisions may act as a deterrent, assuming the peer abuser is aware of their existence, however this approach is less likely to offer protection to the victim and does not negate litigation against schools. The introduction of specific anti-bullying legislation therefore, unless presented as a mandatory notification procedure, would not improve the current situation. Teachers would only be in a position to advise parents and victims of their right to litigate under those provisions, given that they identify behaviours as peer abuse. This cannot increase the protection offered the victim or staff within the school setting and is merely punitive in nature, whereas the use of child protection interventions should provide an avenue for remediation of inadequate behaviours in bullies and victims. It can also enable the teacher to continue a supportive educative roll while other authorities provide support and investigate the abuse reports. In other words the new legislation can be utilised by teachers for their own protection as well as for the well being of victims of peer abuse.

It is suggested here that the current NSW legislation provides the best means of protection and intervention for teachers, since it can be invoked at the school level and provide immediate notification. Child protection legislation therefore provides a more direct and effective pathway for protection. However an examination of the use and effectiveness of the child protection legislation indicates that although peer abuse qualifies on all counts as notifiable under the legislation, invocation of the relevant act has thus far been noticeably absent in such cases.

The capacity of young people to abuse their peers cannot be questioned in view of the substantial evidence available. Rather it is the failure of educators to interpret the behaviour as abusive, and their subsequent failure to invoke protective interventions, which gives rise to the proposition that child protection legislation should be utilised. While a case can be made that peer abuse unquestionably fits the definitions for child abuse there is still some reluctance to apply the mandated legal procedures in the matter of peer abuse. More refined examinations of the legislation may reinforce the proposition, however, and offer the protections necessary to ensure the safety and well being of young people in all circumstances.

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