Time to listen, time for respect, time for action

Bullying, vilification and crimes motivated by hate and prejudice against people with intellectual disability

Version 3.0

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The National Council on Intellectual Disability (NCID) was established over 50 years ago by parents and friends, in an endeavour to improve the quality of life of people with intellectual disability and to fill the need for national unity and information.

The Council is the recognised national peak body with the single focus on intellectual disability, ie, our actions and priorities centre on issues that affect the lives of people with intellectual disability and their families. Our mission is to work to make the Australian community one in which people with intellectual disability are involved and accepted as equal participating members.

NCID has over 5,000 members representing all 8 States and Territories. In addition to having people with disability on its Board, NCID receives policy advice from Our Voice. Our Voice is a committee the membership of which is exclusively people with intellectual disability representing all States and Territories.

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Statement of Principles

- All people have inherent dignity and worth and equal and inalienable rights.
- All people are valued members of the Australian Community.
- People with intellectual disability as equal participating members of the Australian Community have the same rights to:
  - respect for their individual autonomy and independence
  - make their own choices
  - participate in decisions which affect their lives
  - pursue any grievance which affects their lives
  - diversity of choice for housing, education, work, recreation and leisure
  - equity and justice
  - be empowered to take their full place in the Australian Community
  - dignity and privacy in all aspects of their lives

National Council on Intellectual Disability will:

- ✓ work to make the Australian Community one in which people with intellectual disability have full and equal enjoyment of all human rights and fundamental freedoms and are involved and accepted as equal participating members.
- ✓ promote and protect the human rights of all persons with intellectual disability, including those who require more intensive support.

Consultation Statement

National Council on Intellectual Disability consults people with intellectual disability and family members through our State and Territory Agency Members. In particular we:

- conduct an annual survey of members and stakeholders
- hold two meetings a year, rotating through all States and Territories
- present at the Having a Say Conference each year -- attended by over 1,000 delegates, the majority of whom have a disability
- hold forums on specific issues
- sponsor actions and representations on issues of importance to people with disability

On the issue of **Bullying, vilification and crimes motivated by hate and prejudice**, National Council on Intellectual Disability has consulted extensively with people with intellectual disability.

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This publication has been prepared by the National Council on Intellectual Disability Inc. for the Australian Government, represented by the Department of Families, Housing, Community Services and Indigenous Affairs. The views expressed in this publication are those of the National Council on Intellectual Disability Inc. and do not necessarily represent the views of the Australian Government.

Preamble

This policy topic grew out of conversations that took place between Our Voice members:

> Our Voice is a committee of the National Council on Intellectual Disability (NCID), the membership of which is exclusively people with intellectual disability representing all States and Territories. NCID has over 5,000 members representing all 8 States and Territories. In addition to having people with intellectual disability on its Board, NCID receives policy advice from Our Voice.

While the research for this policy paper was undertaken by NCID, the questions, discussion and recommendations came from Our Voice members and their State groups.

This policy paper is endorsed by the Board of National Council on Intellectual Disability as the authentic voice of people with intellectual disability.

The Board of National Council on Intellectual Disability appreciates the contribution of people with intellectual disability to this policy paper and acknowledges the pain and difficulty that bullying has caused many people with intellectual disability and the courage of many who have spoken out on their own and others behalf.

Judy Willock
President

Human Rights Framework

People with intellectual disability, like all Australian citizens, have a right to live in the community free from abuse and violence. This right is enshrined in Article 16 of the UN Convention on the Rights of Persons with Disabilities (see appendix 1) and in the National Disability Strategy, Outcome 2 - Rights protection, justice and legislation (see appendix 2).

Introduction

This policy paper is based on five (5) questions that were developed and tested by Speak Out Tasmania[1]. Forums were then held in Tasmania, Victoria and New South Wales at which people with intellectual disability were given the opportunity to discuss bullying. In addition, a major forum was held at the 2012 Having a Say Conference in Geelong.

The two (2) main issues that dominated all the forums and discussions were:

1. people considered that they were the subjected to bullying because they had an intellectual disability;
2. the pain and hurt that they felt during the time they were bullied caused them ongoing suffering which remained with them years after the bullying had stopped;
3. very few people took the issue of bullying seriously when a complaint was made — for example, people in authority, teachers and police did nothing about it.

In general, the bullying they suffered were not single events or something that happened now and then. It was not teasing or an attempt at 'being funny'. The bullying that was experienced was over a period of time by a person or persons who had no regard for the person with intellectual disability's value as a human being. It was hateful!

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[1] Speak Out Tasmania is a membership organisation for people with intellectual disability

In many instances, people with intellectual disability felt that their 'lives were being taken from them', that they could not freely move about in their community and that they were 'worthless', that is, less valued than other members of the community.

For people with intellectual disability, bullying will only be taken seriously and the community will only respond effectively to it if it is seen as a crime punishable with a prison term.

Definition of bullying

The definition that we used in the forums was:

> Bullying is a desire to hurt someone by teasing, name calling, excluding from an activity, etc. It is done by a more powerful person or group, it is without justification, it is often repeated, and it can be done for enjoyment.

What are some of the forms of bullying?

- verbal (most common, most painful and longest lasting impact) eg. teasing, gossip, harassment and name-calling
- threats
- rumours
- physical violence
- damage to property

When does bullying occur and for how long?

- a person can be bullied for years by one person or by a group
- bullying can happen sporadically or over a long period of time
- some people are bullied wherever they go — at school, work, or in the community

What do people think about bullying?

- most people believe that bullying cannot be stopped
- they believe that if they report it nothing is done or it gets worse
- most people say that they would feel happier if they felt safer in their community

Voices of people with intellectual disability

Five (5) questions

The forums were conducted around five (5) discussion questions:

1. Where were you when you were bullied?
2. What happened when you were bullied?
3. How did it make you feel?
4. What did you do about it?
5. Why do you think that you were 'picked' on?

A sixth (6th) question was asked at the Having a Say Conference,

6. Should bullying be made a crime?

Responses from the forums

1. Where were you when you were bullied?

People with intellectual disability in responding to this question listed the following places where they were bullied — they are listed in order of most reported to least reported:

- school
- bus stops and public transport in general
- local community
- workplace
- residential setting

2. What happened when you were bullied?

- called names
- things and money taken off me
- physically jostled, touched and hit
- beaten up
- ignored

3. How did it make you feel?

- the first time was nothing but, when it happened again and again, I felt awful
- I thought no one liked me
- I could not understand why they were doing it to me
- I was scared
- I felt like sh*t
- I didn't know what to do
- no one wanted to help me and that made it worse

4. What did you do about it?

- I didn't know who to tell
- I told my teacher
- I told my parents, who talked to the police
- I went to the police
- I told my friend

5. Why do you think that you were 'picked' on?

- because I have a disability and my speech is not very good
- because I have a disability and I am mostly by myself
- because I have a disability and they think I will not tell
- because I have a disability and they think I am 'easy pickings'

6. Should bullying be made a crime?

- yes
- yes, we have to obey the law, why shouldn't other people?
- yes, they will only stop if they go to jail
- yes, it has to be clear that bullying is wrong
- yes, bullying hurts people

Should Bullying be a Hate Crime?

For most participants in our forums and discussion groups, bullying should be a 'hate crime'. They have two (2) main reasons for advocating this:

1. for most people with intellectual disability, being bullied was very painful and it had long-term effects that were devastating for the person being bullied and those around them;
2. when people with intellectual disability reported that they were being bullied, the action of the bully was not taken seriously because the person with intellectual disability was not taken seriously or the action of the bully was not considered to be serious.

What is a disability hate crime?

> "(A) crime wholly or partly motivated by, grounded in, or aggravated by, bias or prejudice towards particular groups of people. The key element is prejudice towards the group affiliation of the victim. In other words, the victim is targeted on the basis of his/her presumed membership of that group."
>
> *Hate crime laws in Australia: Are they achieving their goals?, page 2*

Discussion

The bullying that people with intellectual disability reported falls into three (3) groupings:

1. **crimes**: physical violence and threats, stealing, etc.
2. **vilification**: public verbal abuse and use of language which will incite prejudice against people with intellectual disability
3. **private abuse**: calling of names, ignoring and not including a person

While all the above actions were seen by people who attend the forums and discussion groups as bullying, only the third (3rd) group matches the definition of bullying that we began with; though the definition does include 'physical violence' and 'damage to property' in its explanation.

The one factor that all three groups have in common is that the abuse is carried out because a person has a disability; the one thing that the three (3) groups may not have in common is that they may not be repeated, eg, crimes and vilification may be one-off actions.

The issue though is not a definitional one but how do we as a society address the abuse of people with intellectual disability? Can and should all forms of bullying be considered a hate crime? To address this question, this paper will discuss each grouping in turn.

(Hate) Crimes against people with intellectual disability

A criminal offence is a criminal offence! And, for people with intellectual disability, their frustration is that when they report a crime, physical violence or theft, on many occasions they are ignored as bullying is not seen as seriously as a crime would be. Calling criminal activity 'bullying' (even if it is repeated) also diminishes the responsibility of the police and courts to take appropriate action.

Criminal activity should be removed from all definitions of bullying and called for what they are and treated for what they are, that is, 'crimes'.

There is a conflict between the concepts of bullying and a crime. Definitions of bullying state that it must be a repeated action, whereas a crime is an offence the first and each subsequent time it is committed. Bullying which involves physical assault and theft or destruction of property is and should be seen as a crime first and foremost; and, where the crime has been committed against a person with disability because they have a disability, the police and the courts must recognise that the person with disability will likely be targeted by further criminal activity because they have a disability. This recognition must be acknowledged in both bail and sentencing legislation.

If the crime is addressed in the first instance, then the person with intellectual disability will not be subjected to further 'bullying'.

When the literature talks about 'hate crimes', it is not talking about a separate criminal act but the motivation behind the crime, thus the term 'hate crime' is misleading. The majority of legislation addressing disability hate crime is through sentencing laws. Where a crime is judged to be committed against a person with a disability because they have a disability, then the judge may increase the sentence that the perpetrator receives.

> "Giving a particular factor express statutory recognition ... could serve an important symbolic function by making its presence clear, accessible and transparent to victims, offenders and the broader community"
>
> *Sentencing for offences motivated by hatred and prejudice, p18.*

A number of countries have sentencing laws that increase either the length of punishment or the non-parole period if the criminal is motivated by prejudice against people with disability, eg. United Kingdom, USA, New Zealand, Canada and Sweden.

In Australia, only NSW currently has such laws. Laws addressing racial and religious hatred/prejudice are more common both in Australia and overseas.

Other States/Territories are considering either introducing 'hate crime' sentencing laws or extending current laws to a broader groups. For example, Victoria:

> "... crime and specifically violence prevention measures require a range of responses including innovative social policy measures and community education programs which actively challenge such prejudice. These programs should always be coupled with legal sanctions against those who choose to perpetrate crimes motivated by hatred and prejudice. Sentencing policy has an important part to play in such prevention and a new statutory aggravating factor is a critical element in a continuum of measures that will be necessary to address the problem. By adding a specific sentencing factor which takes account of an offender's prejudicial motivation, those whose responsibility it is to provide community education programs may be able to more confidently communicate the community's intolerance of such offences and thus maximise the effectiveness of other non-legal measures designed to eliminate prejudice and hatred in Victoria."
>
> *Sentencing for offences motivated by hatred and prejudice, p18.*

Recommendation: That crimes, even when they are motivated by hate/prejudice, not be included in the definition of bullying.

Recommendation: That all States, Territories and the Commonwealth include in their sentencing legislation increased penalties for hate/prejudice motivated crimes.

Vilification of people with intellectual disability

The verbal abuse of people with intellectual disability either across the street or across the airwaves causes both direct and indirect harm. It not only harms the people who are subjected to the abuse or who have an intellectual disability and hear it but, if it is not appropriately dealt with, it legitimises abuse and discrimination against people with intellectual disability. For example, the recent calling of airport workers 'retarded' by a well-known personality because he received poor service, by inference, implied that people with intellectual disability are incompetent. This, unfortunately, happened in NSW which only has anti-vilification laws for race and religion. Only Tasmania has anti-vilification laws for disability (Anti-Discrimination Act 1998).

Recommendation: That vilification, even when motivated by hate/prejudice, not be included in the definition of bullying.

Recommendation: That all States, Territories and the Commonwealth introduce anti-vilification laws for people with disability.

SEE POSTSCRIPT BELOW: R-WORD CAMPAIGN

Private abuse and people with intellectual disability

Bullying is generally seen by the community as verbal abuse and/or acts of exclusion (particularly when committed by a child) and for some time has been addressed in education systems and increasingly in the workplace. Very little of the literature surveyed carried explicit messages about people with disability. The question this raises is whether disability should be treated separately or seen within the general context of respect for people who are not seen as the 'norm'.

Recommendation: That all bullying policies and awareness campaigns be asked to review their literature to ensure that it either directly or indirectly addresses the needs of people with intellectual disability.

SEE POSTSCRIPT BELOW: R-WORD CAMPAIGN

Are people with intellectual disability vulnerable?

In all of the literature surveyed for this paper, the idea of the vulnerability of people with disability was a constant theme.

People with intellectual disability are often seen as vulnerable to abuse because they have an intellectual capacity impairment. The idea that the vulnerability lies within their person was challenged by people with intellectual disability who asked, 'when a crime is committed, what should a person do? If we report a crime to the authorities and they take no action, does this not make us vulnerable to more abuse — not because of who we are but because the perpetrators see and know that the authorities will not act? Who is making us vulnerable in this situation?'

This is an important question. If we see people with intellectual disability as vulnerable, then we will either seek to protect them by restricting their freedoms (human rights) or 'blame' them for being victims. If we see their vulnerability as the failure of society to respond, then the focus changes from the person with intellectual disability to those responsible for acting to protect all citizens.

In seeing the vulnerability in the person with intellectual disability, the authorities have made people with intellectual disability the victim twice over.

It is important to remember that people with intellectual disability, as with all people in Australian society, learn, develop skills and gain an understanding of their community; they are not passive. As such, they learn how to protect themselves within their community and to interact with those who have been placed in authority, ie, police, teachers, etc. It is not their failure to act as citizens that is the issue but the failure of those in authority to act on their behalf as citizens.

Conclusion

The pain and long-term suffering of people with intellectual disability caused by bullying is not understood by many in their community. While people with intellectual disability are not unique in experiencing bullying as members of the disability community or the general community, it is their capacity to communicate what is happening to them within conventional communication terms and to articulate their feelings, anger, etc, both at the time and as they grow older which exacerbates the hurt caused.

It is not sufficient to have awareness-raising or policies in schools or workplaces. These have not worked and will not work by themselves. It is also necessary to have:

- ✓ strong independent advocacy
- ✓ strong self-advocacy
- ✓ counseling support for people with intellectual disability
- ✓ legislation to ensure crimes and vilification are dealt with, to act as a deterrent and as a suitable punishment for the harm caused

Human Rights First, an organisation in USA, has developed a Ten Point Plan for Combating Hate Crime (see appendix 3) which provides an excellent framework for addressing the issues of hate crimes, vilification and bullying. **It is recommended that NCID uses this framework as an action plan to address the issues raised by Our Voice.**

Future action

Our Voice to:

- ➡ Present this paper to NCID's Board and request that NCID and its members seek the endorsement of the 10 Point Plan by State/Territory and Commonwealth governments.
- ➡ Submit paper and make representations to the number of organisations which are promoting the urgent need to address bullying
- ➡ Present this paper and recommendations to the Human Rights Commission
- ➡ Make a submission based on this paper to the Commonwealth Attorney General
- ➡ Make a submission to the Standing Committee on Law and Justice
- ➡ Make a submission to the Australian Law Reform Commission

Postscript

R-Word - Spread the Word to End the Word

Our Voice and National Council on Intellectual Disability support the R-Word campaign and encourages everyone to Take the Pledge.

The R-word is the word 'retard(ed)'. Why does it hurt? The R-word hurts because it is exclusive. It's offensive. It's derogatory. The R-word is hate speech. See why supporters think the R-Word is hurtful when used in jokes or as part of everyday speech.

How "retardation" went from a clinical description to a word of derision:

When they were originally introduced, the terms "mental retardation" or "mentally retarded" were medical terms with a specifically clinical connotation; however, the pejorative forms, "retard" and "retarded" have been used widely in today's society to degrade and insult people with intellectual disabilities. Additionally, when "retard" and "retarded" are used as synonyms for "dumb" or "stupid" by people without disabilities, it only reinforces painful stereotypes of people with intellectual disabilities being less valued members of humanity.

www.r-word.org

Recommendations

1. **That NCID uses the framework as a action plan to address the issues raised by Our Voice.**
2. **That crimes, even when they are motivated by hate/prejudice, not be included in the definition of bullying**
3. **That vilification, even when motivated by hate/prejudice, not be included in the definition of bullying.**
4. **That all States, Territories and the Commonwealth introduce anti-vilification laws for people with disability.**
5. **That all States, Territories and the Commonwealth include in their sentencing legislation increased penalties for hate/prejudice motivated crimes.**
6. **That all bullying policies and awareness campaigns be asked to review their literature to ensure that it either directly or indirectly addresses the needs of people with intellectual disability.**

References

- Life Matters, Radio National, Friday 18 May 2012
- The L Word (Facing the school bully), H Katzen, Griffith Review 36
- Hate Crime Laws in Australia: Are they achieving their goals? G.Mason.
- Sentencing for offences motivated by hatred or prejudice, Sentencing Advisory Council (Victoria), July 2009.

Websites

Australian

www.bullyingnoway.gov.au Australian Education Authorities

www.ncab.org.au National Centre Against Bullying

www.hreoc.gov.au/bullying Human Rights Commission

International

www.mencap.org.uk/campaigns/standbyme Mencap (UK)

www.humanrightsfirst.org Human Rights First (USA)

www.r-word.org R-Word Campaign

To get help with bullying

Lifeline (13 11 14) is a free and confidential service staffed by trained telephone counsellors. www.lifeline.org.au

Kids Help Line (1800 55 1800) is a free and confidential telephone counseling service for 5 to 25 year olds in Australia. www.kidshelp.com.au

Reach Out is an online community for young people that can help with mental health and wellbeing related issues; they also provide opportunities for connecting with young people. http://au.reachout.com

Appendix 1.

UN Convention on the Rights of Persons with Disabilities

Article 16

Freedom from exploitation, violence and abuse

States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.
States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.
In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.
States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.
States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Appendix 2.

National Disability Strategy

Rights Protection, Justice and Legislation

Policy Direction 4
People with disability to be safe from violence, exploitation and neglect.

There is a range of evidence which suggests that people with disability are more vulnerable to violence, exploitation and neglect. People with disability fare worse in institutional contexts where violence may be more common. People with disability are more likely to be victims of crime and there are also indications that women face increased risk.

18 per cent of people with a disability report being victims of physical or threatened violence compared to 10 per cent without (ABS, 2006).
The National Police Research Unit at Flinders University studied 174 people with an intellectual disability and found that they were 10 times more likely to have experienced abuse than non-disabled people (Llewelyn-Scorey, 1998).
A recent US study found that women with disabilities were 37.3 per cent more likely than women without a disability (20.6 per cent) to report experiencing some form of intimate partner violence. 19.7 per cent of women with disabilities reported a history of unwanted sex compared to 8.2 per cent of women without a disability (Time for Action, 2009).

Appendix 3.

Ten Point Plan for Combating Hate Crime

Human Rights First calls on all governments to implement the following **Ten-Point Plan** for combating violent hate crimes:
Acknowledge and condemn violent hate crimes whenever they occur. Senior government leaders should send immediate, strong, public and consistent messages that violent crimes which appear to be motivated by prejudice and intolerance will be investigated thoroughly and prosecuted to the full extent of the law.
Enact laws that expressly address hate crimes. Recognizing the particular harm caused by violent hate crimes, governments should enact laws that establish specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.
Strengthen enforcement and prosecute offenders. Governments should ensure that those responsible for hate crimes are held accountable under the law, that the enforcement of hate crime laws is a priority for the criminal justice system, and that the record of their enforcement is well documented and publicized.
Provide adequate instructions and resources to law enforcement bodies. Governments should ensure that police and investigators - as the first responders in cases of violent crime - are specifically instructed and have the necessary procedures, resources and training to identify, investigate and register bias motives before the courts, and that prosecutors have been trained to bring evidence of bias motivations and apply the legal measures required to prosecute hate crimes.
Undertake parliamentary, inter-agency or other special inquiries into the problem of hate crimes. Such public, official inquiries should encourage public debate, investigate ways to better respond to hate crimes, and seek creative ways to address the roots of intolerance and discrimination through education and other means.
Monitor and report on hate crimes. Governments should maintain official systems of monitoring and public reporting to provide accurate data for informed policy decisions to combat violent hate crimes. Such systems should include anonymous and disaggregated information on bias motivations and/or victim groups, and should monitor incidents and offenses, as well as prosecutions. Governments should consider establishing third party complaint procedures to encourage greater reporting of hate crimes and conducting periodic hate crime victimization surveys to monitor under-reporting by victims and under-recording by police.
Create and strengthen anti-discrimination bodies. Official anti-discrimination and human rights bodies should have the authority to address hate crimes through monitoring, reporting, and assistance to victims.
Reach out to community groups. Governments should conduct outreach and education efforts to communities and civil society groups to reduce fear and assist victims, advance police-community relations, encourage improved reporting of hate crimes to the police and improve the quality of data collection by law enforcement bodies.
Speak out against official intolerance and bigotry. Freedom of speech allows considerable latitude for offensive and hateful speech, but public figures should be held to a higher standard. Members of parliament and local government leaders should be held politically accountable for bigoted words that encourage discrimination and violence and create a climate of fear for minorities.
Encourage international cooperation on hate crimes. Governments should support and strengthen the mandates of intergovernmental organizations that are addressing discrimination - like the Organization for Security and Cooperation in Europe, the European Commission against Racism and Intolerance, and the Fundamental Rights Agency - including by encouraging such organizations to raise the capacity of and train police, prosecutors and judges, as well as other official bodies and civil society groups to combat violent hate crimes. Governments should also provide a detailed accounting on the incidence and nature of hate crimes to these bodies in accordance with relevant commitments.

Referenced in Sentencing for offences motivated by hatred or prejudice,
Sentencing Advisory Council, July 2009.