
Enhancing Online Safety for Children

Prepared by BoysTown



BoysTown

Fresh start.
New hope.

Authorised By:

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About BoysTown

BoysTown is a registered charity which specialises in helping disadvantaged young people who are at risk of social exclusion. BoysTown provides a range of youth counselling, family support and employment support services across Australia. Our services are located in some of the most disadvantaged Australian communities including Logan City and Goodna near Brisbane, Western Sydney, North Adelaide, Port Pirie, South Australia and Balgo Hills, Western Australia. In 2012-13 we provided services to over 275,000 kids, young people and families.¹

BoysTown operates Kids Helpline which is Australia's only 24/7 telephone and online counselling service for children and young people aged 5-25 years. Kids Helpline is a critical support and counselling service for children and young people impacted by cyber-bullying and other adverse online experiences. Through Kids Helpline, children and young people can gain confidential information, support and counselling relating to their issues and concerns. In 2013 Kids Helpline provided these services through over 700,000 direct contacts and self-directed website help-seeking activities with children and young people. The Kids Helpline data sets provide a unique information resource for helping government, academics, educators and youth support services interested in contemporary issues impacting the lives of young people.

Overview

As stated in the public consultation paper, cyber-bullying and other cyber-risks impacts a significant number of children and young people in Australia. The impacts of cyber-bullying can be damaging to the mental health and life opportunities of children and youth. A study undertaken by Kids Helpline's research team found that these impacts can include anxiety, depression symptomology and a deterioration in academic achievements.² Responding in ways to reduce the incidence and impacts of cyber-bullying is an essential priority for both social policy and mental health prevention in Australia.

BoysTown wishes to acknowledge the Australian Government's commitment to giving young people options to ameliorate the impacts of cyber-bullying. We generally support the proposed establishment of the Children's e-Safety Commissioner, the provisions in relation to the take-down of deleterious material posted on social media and other online sites and the civil enforcement regime. We question however the proposals in relation to the introduction of a new Commonwealth cyber-bullying offence.

As acknowledged in the public consultation paper there are a multiple number of current offences in existing Commonwealth, State and Territory criminal codes that cover behaviours associated with cyber-bullying. These are not generally enforced due to operational issues. To introduce a new offence at the Commonwealth level which will require the cooperation of already over committed State legal and enforcement agencies to enact may not be effective. If effective it may unintentionally criminalise young people for acts that can be impulsive in

¹ BoysTown (2013) Annual Report 2013: 8

² Price, M., Dalgleish J. (2010) Cyberbullying: Experiences, Impacts and Coping Strategies as described by Australian Young People. Youth Studies 29 (2): 55-56

nature. For example, research shows that a peak age group engaged in cyber-bullying behaviour are those aged 10-14 years.³

It is our view that greater investment in educational initiatives with young people about the impacts of cyber-bullying that increases understanding about the consequences of this behaviour and initiatives to support parents in positively responding to bullying behaviour that may be both perpetrated or enacted upon their children may in the long term be more effective in reducing its incidence.

Responses to Questions Outlined in the Consultation Paper

Comment will now be provided in relation to the questions contained in the public consultation paper.

Q1: What existing programmes and powers should the Commissioner take responsibility for?

We agree with the scope of responsibilities outlined in 1.1 for the proposed Children's e-safety Commissioner. This office will be multi-functional in nature in that it will be a policy hub, enforcement agency and purchaser of educational and prevention services for Government in relation to online safety issues affecting children. Consequently, the transfer to this office of the listed online safety programmes and resources outlined in Appendix A is supported.

Q2: Considering the intended leadership role and function of the Commissioner, which option would best serve to establish the Commissioner?

BoysTown would support Option 3 in relation to the establishment of this new office. The proposed functions of the office of the Children's e-safety Commissioner is broadly consistent with the existing mandate of the Australian Communications and Media Authority (ACMA). The location of this new office within the regulator will strengthen its existing child and youth focus.

Q3: Are these definitions of 'social networking sites' suitable for defining 'social media sites' for the purposes of this scheme?

Q4: Should the proposed scheme apply to online games with chat functions?

From a service provider perspective these definitions appear to be appropriate. However this may require further review by appropriately qualified legal practitioners.

In relation to online games, anecdotal information suggests that although bullying and aggressive behaviour can occur in this space, that the closed nature of these networks enables inappropriate behaviour to be contained and lends itself to increased levels of self-regulation by participants. Although in principle it would be consistent to incorporate online games into the enforcement regime of the Children's e-safety Commissioner the inherent difficulties in regulating this activity suggest that this could occur at a later time once implementation of new laws regarding social media sites are firmly established.

³ Price & Dalgleish (2010): 54

Q5: What is the best criterion for defining a 'large social media site', and what available sources of data or information might be readily available to make this assessment?

Q6: Is the coverage of social media sites proposed by the Government appropriate and workable?

From a service provider standpoint the definitions and regulations covering large social media sites need to be flexible enough to provide scope to regulate:

- Social media environments that suddenly emerge and become popular amongst young people
- Application software – Apps
- Online environments that young people can access through mobile devices and game consoles

Q7: Should the scheme allow children who are unsupported by adults to be active participants (either as complainants or notice recipients)? Having regard to the vulnerability of children, what procedural safeguards should be in place?

One of the dynamics of bullying behaviour is that the targeted child may not disclose their concerns to others due to their feelings of humiliation and shame.⁴ Consequently all children should have the right to directly contact the Children's e-safety Commissioner in relation to their concerns about cyber-bullying as this may provide another option to encourage young people to 'directly speak-out' about their experiences.

With regard to procedural safeguards the Children's e-safety Commissioner could enact strategies to:

- With the consent of the young person engage with the family to support the young person making the complaint
- Recruit and train advocates to support young people. These advocates could be engaged either on a voluntary or paid basis
- Connect young people with Not-for-Profit (NFP) organisations who could take on a support and advocacy role with the young person

Q8: What type of information would it be necessary to collect from complainants in order to assess their eligibility under the proposed scheme (including age verification), and also to adequately process complaints with minimal investigation required?

As stated young people usually find it difficult to disclose their experiences of being bullied. Consequently young people's accessibility to the Children's e-safety Commissioner and the complaints process should be positively encouraged. Consistent with this principle, the complainant should only be required initially to provide sufficient information to allow the Children's e-safety Commissioner to identify them, to enable contact with them and to understand the nature of their concern. The basic information outlined in section 2.1 that the Children's e-safety Commissioner would need to be presented with to commence a complaint, appears to be reasonable.

⁴ Price and Dalgleish, 2010: 58

However consideration also needs to be given to the establishment of other options for the lodgement of complaints by young people with literacy issues or where English may not be their preferred language. For example a telephone complaints hotline may be required to facilitate access to the complaint process for these young people.

Q9: How would an eligible complainant demonstrate that the complainant has reported the content to the participating social media site?

In respect to the principle of facilitating access to the complaints process for young people reporting cyber-bullying, young complainants should only be required to outline the actions they have taken to report the matter of concern to the social media site.

Q10: What should the timeframe be for social media sites to respond to reports from complainants? Is 48 hours a reasonable timeframe, or is it too short or too long?

Q11: What level of discretion should the Children's e-Safety Commissioner have in how he/she deals with complaints?

Material posted on the net can become viral extremely quickly. This dictates that actions in response to complaints needs to occur as soon as possible, certainly within 24 hours or less.

Furthermore, it is recommended that social media providers and the Children's e-safety Commissioner should act on the principle of 'harmfulness' so that the content is immediately removed once a complaint has been received 'pending investigation'. We appreciate that this position may be criticised on the basis of restricting free speech. However as noted previously cyber-bullying can have serious negative impacts on the emotional wellbeing and educational achievement of young people. Furthermore, the Convention on the Rights of the Child clearly states that Governments need to act in the best interest of children and consistent with their vulnerable developmental stage, offer special protection. This Convention is an international treaty to which the Australian Government is a signatory. Consequently consistent with these treaty responsibilities it would be justifiable for the Children's e-safety Commissioner to take down offensive or questionable material immediately to lessen its impact on children, rather than for it to remain posted pending an outcome from an investigation.

Q12: What is an appropriate timeframe for a response from the social media site to the initial referral of the complaint?

Consistent with the principles outlined in response to Q10 & Q11 social media sites should respond to the Children's e-safety Commissioner immediately and certainly within 24 hours. If the legislators adopt our suggestion that offensive or questionable material subject to complaint should be immediately taken down pending an investigation then the time factor is taken out of the equation.

Q13: Are the nominated factors, the appropriate factors to be taken into account when determining whether the statutory test has been met? Should other factors be considered in this test?

Q14: Is the test of 'material targeted at and likely to cause harm to an Australian child' appropriate?

In general we believe that determinations of complaints need to be based on the civil law standards of 'on the balance of probability' test. This standard is used in relation to the management of child protection issues. It would provide the Children's e-safety Commissioner with a more proactive position in relation to protecting children subjected to cyber-bullying.

In relation to the nominated factors, we believe that consideration should be given to changing the first listed factor from:

*'That the material which is the subject of the complaint would have to relate **directly** to the child in question'*

to:

'That the material which is the subject of the complaint would have to relate to the child in question'

In some cases children can experience cyber-bullying through ridicule and offensive comments in relation to a personal attribute such as their race, or an aspect of their appearance, rather than being identified directly. It is unclear whether the existing wording of this factor would capture this form of cyber-bullying.

Q15: What is an appropriate timeframe for material to be removed?

Consistent with our responses to Q10-12, all actions in respect to the take down of offensive material, given that this material can reach large numbers of people very quickly, should be immediate.

Q16: What would be the best way of encouraging regulatory compliance by participating social media sites that lack an Australian presence?

There is currently international concern about cyber-bullying and other cyber-risks to children and young people. Consequently there may be scope to develop an international treaty to respond to this issue.

One practical option to advance this matter would be through a review of the current Convention on the Rights of the Child. This Convention was originally endorsed by the United Nations General Assembly in 1989 prior to the widespread adoption of information technology. The Australian Government through its United Nations representatives could propose that the Convention be reviewed in light of advancements with Information Technologies and our contemporary understanding of impacts on children from cyber malpractices. Possibly an Addendum to the current Convention could be developed in respect to cyber related issues. Signatories to the Convention which includes most countries would then be responsible for developing domestic legislation to give effect to any new provision of the Convention.

Q17: Should the proposed scheme offer safe harbour provisions to social media sites which have a complying scheme, and if so, what should they be?

In principle we agree that compliant social media sites should be offered safe harbour provisions consistent with the New Zealand model.

Q18: Is merits review by the Administrative Appeals Tribunal the most appropriate review mechanism and if so, which parties and in relation to which types of decision is it appropriate? What are the alternatives?

Q19: What do industry representatives consider are the estimated financial and administrative impacts of compliance with the proposed scheme?

We wish to make no comment in relation to these issues.

Q20: In light of the Government's proposed initiatives targeting cyber-bullying set out in Chapters 1 and 2; do the current criminal laws relating to cyber-bullying require amendment?

Q21: Is the penalty set out in section 474.17 of the Criminal Code appropriate for addressing cyber-bullying offences?

Q22: Is there merit in establishing a new mid-range cyber-bullying offence applying to minors?

Cyber-bullying is a product of the quality of peer relationships between children within a community. This is demonstrated by research indicating that 51% of participants in a National survey conducted by Kids Helpline reported that they had been bullied 'face to face' by their cyber-bully.⁵ Furthermore 71% of participants reported that they were aware of the identity of their cyber-bully.⁶ Furthermore this research also showed that cyber-bullying emerged as a behaviour amongst very young children and that a peak age for the emergence of cyberbullying was 10-14 years. Given the developmental nature of children and especially their tendency towards impulsive and risk taking behaviour it is unlikely that the introduction of a new offence relating to cyber-bullying would divert children from this behaviour and reduce its incidence.

In relation to extreme cases of cyber-bullying there are already numerous proscribed offences within both State and Commonwealth jurisdictions that can respond to these matters. The value of introducing a new mid-range cyber-bullying offence applicable to minors is ambiguous.

Given the evidence concerning the dynamics of cyber-bullying we believe that investment in educational responses that encourage and reinforce respectful behaviours between children at school would have more value and efficacy in reducing incidents of cyber-bullying than investment in law enforcement. In addition we believe further investment should occur in relation to supporting families affected by cyber-bullying. An effective support could be the development of a national helpline for these families.

Q23: Is there merit in establishing a civil enforcement regime (including an infringement notice scheme) to deal with cyber-bullying?

Q24: What penalties or remedies would be most appropriate for Options 2 and 3?

We are supportive in principle of the proposal to establish a civil penalty regime as outlined in Section 3.2. The introduction of this mediation process will provide

⁵ Price & Dalgleish (2010): 55

⁶ Price & Dalgleish (2010): 55

children and their families impacted by cyber-bullying with another option to resolve the matter.

We would also be receptive to referrals from the Children's e-safety Commissioner of children needing urgent counselling or support to Kids Helpline as canvased in the consultation paper.

Conclusion

The Commonwealth Government needs to be congratulated for initiating the development of new remedies to support children and young people in relation to cyber-bullying. BoysTown supports the establishment of the Children's e-safety Commissioner, the proposed take down provisions for offensive material lodged on social media and other online sites and the suggested civil enforcement regime. We question the value of introducing a new Commonwealth offence in relation to cyber-bullying as it is unclear how this would act as a deterrent for very young children and add value to existing criminal statutes. We would be pleased to support the Commonwealth Government in the implementation of these reforms.