

Submission to the Public Consultation on

# Enhancing online safety for children

Australian Government

Department of Communications

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## **Background about Colony 47 and our programmes**

Colony 47 is one of Tasmania's leading community service organisations. We deliver services across Tasmania to people who are homeless or at risk of homelessness and people who are experiencing barriers to participation in society, in particular because of issues relating to employment, training, housing and lack of social and family networks.

We have extensive experience in delivering services to, and working with, children, young people and their families. The majority of our work in this area is undertaken using an early intervention model where we work with the young person and their family to improve their family relationships, strengthen the skills of the parents and improve the connections and communication between the young person, their family, their education and the community. We currently deliver the following specialised programs:

1. Youth Connections – supports young people who have disengaged or are at risk of disengaging from education;
2. Reconnect – supports young people aged 12 – 18 who are homeless or at risk of homelessness, and their families, to improve their level of engagement with family, education, employment, training and the community;
3. Mara House – a medium to long term 24 hour supported accommodation service for young women aged 13 – 18 who are homeless or at risk of homelessness;
4. HIPPY – a home based early childhood enrichment program which promotes school readiness for ages 4 – 5.
5. Communities Supporting Families – provides support for families to build positive relationships with their children aged 6 – 12 years to ensure their wellbeing;
6. Tapping Inner Strengths – provides parents with strategies for parenting their teens;
7. Colony Partnership Brokers – works with organisations and individuals to achieve improved educational outcomes for young people by fostering engagement between education providers, business and industry, parents, families and community organisations.

**It is our experience in delivering these services and working directly with families and children and young people aged 0 – 18 years that informs Colony 47's comments in relation to the public consultation on enhancing online safety for children.**

## General Comments

-Our agency fully endorses and applauds the Federal Governments initiative to establish an e-Safety Commissioner. This office needs to have the broadest powers possible for assessing and enforcing action against cyber-bullying, both at the level of the organisation and the individual.

-Once a complaint is made to the e-Safety Commissioner the immediate action needs to be removal of the content from the Social Media site until the complaints handling procedure is finalised.

-Although freedom of speech is a right that is inherent in a democratic society. Bullying and harassment is a criminal offence, when this is perpetrated against a minor (albeit by another minor) it can have far reaching consequences.

-The very nature of on-line forums is rapid spread of a message/image to potentially a mass audience. If material is not removed until the complaints handling procedure is finalised the damage of the content has already occurred to the child and the material already potentially propagated to other social media sites.

-The right of a child to be free from bullying and harassment must out-weigh the rights of multi-billion dollar corporations to invoke 'freedom of speech' or 'financial duress' in removing potentially harmful content from their sites.

-We fully endorse the proposal of a civil enforcement regime under the office of the e-Safety Commissioner.

-In conjunction with the establishment of the e-Safety Commissioner we would encourage the government to take greater action on strategies to prevent cyber-bullying and raise awareness of on-line safety with children. This needs to include a television and social media campaign regarding what constitutes a criminal offence and the penalties for these offences in regard to cyber-bullying, as well as creating greater awareness and proactivity among parents in how to guide their children about on-line safety.

**Question 1:** Colony 47 has the view that the Commissioner should have broad ranging powers in relation to the online safety of children. We endorse the statement that the Commissioner must have strong working relationship with any agencies that retain their online safety programmes to ensure consistent messaging and ease of access for complainants. The functions of the Commissioner s listed in 1.1 of the public consultation document appear comprehensive.

**Question 2:** To ensure adequate independence, resourcing and authority Colony 47 considers that either Option 1 or 2 would best serve to establish the Commissioner.

**Question 3:** The definitions utilised appear to be suitable for the purposes of the scheme and Colony 47 would endorse as broad a definition as possible when defining the scope of the Commissioner's powers particularly in light of the rapid advances in social media technology.

**Question 4:** The proposed scheme should absolutely encompass online games with chat functions. These are an extremely popular avenue of social interaction for many young people.

**Question 5:** N/A

**Question 6:** The coverage of large social media sites by the scheme is workable but ultimately this scheme needs to cover all social media sites accessed by Australian children.

**Question 7:** Children unsupported by adults should definitely be able to be active participants in the scheme. Suggested safeguards would be to establish positions with the Commissioner's Office specifically dedicated to provide information and advice in an age appropriate manner and assist with the preparation of a complaint or understanding of a notice. Fair Work Australia has a strong model to emulate.

**Question 8:** Please see response to Question 7, and ensure that the process for a complainant is simple, sympathetic and if required in the case of child unsupported by an adult – age appropriate.

**Question 9:** Reporting to the Social Media Site should be recommended as the first step in a course of action. But, we do not feel that documented evidence of having reported the content to the participating social media site should be required prior to the e-Safety Commissioner assessing the complaint. The damage done to a child through cyber-bullying occurs rapidly as that message/image can be spread to a mass audience with great ease. The priority in these situations needs to be the removal of the content from the site pending the outcome of any investigation.

**Question 10:** The minimal timeframe possible, however a maximum of 24 hours.

**Question 11:** The Children's e-Safety Commissioner needs to have very broad discretion with how complaints are dealt with.

**Question 12:** Once a complaint is made to the Commissioner and the social media site is notified the content in question should be removed immediately, then the social media site has time to respond and negotiate depending on the circumstances whether content must be permanently taken off the site or can be replaced. As stated above cyber-bullying by its very nature is incredibly time-sensitive. By the time the delays occur between complaints and responses with social media site and the commissioner have concluded the damage to the child is done. If the content is removed and it is found to not be cyber-bullying it can be reinstated on the site.

**Question 13:** The nominated factors appear reasonable

**Question 14:** The test of 'material targeted at and likely to cause harm to an Australian child' seems appropriate.

**Question 15:** Material should be removed immediately once the Commissioner notifies the social media site of the complaint. If the complaint doesn't meet the statutory test it can be reinstated on the site. Please see response to Question 12.

**Question 16:** Working toward international agreements, particularly with countries that do popularly host these sites would be an additional measure to ensure higher levels of compliance. The annual reporting of statistics as noted on page 18 of the public consultation document is also an effective mechanism to promote compliance.

**Question 17:** N/A

**Question 18:** N/A

**Question 19:** Colony 47 is a Community Service Agency not an industry representative; however we have grave concerns that claims of administrative and financial burden by social media site not out-weight the right of a child to interact on social media without being bullied or harassed.

**Questions 20, 21 and 22:** Colony 47 does not claim expertise in an understanding of the complexities of the Criminal Code, However, from a 'lay' perspective it is obvious that current laws or the enforcement of those laws do not adequately discourage perpetrators or protect victims of cyber-bullying. The recommendations of the National Bullying, Young People and the Law Symposium appear sound. Therefore it would appear that there may be merit in establishing a new mid-range offence applying to minors. However, the most powerful aspect of any law is that of a deterrent. Therefore the options outlined in Section 3.1 (pg 21 of the consultation paper) around awareness raising are crucial to the effectiveness of either the current law or any new law around cyber-bullying. This awareness campaign needs to be aimed at schools, and parents as well as directly at

children. We acknowledge that schools, and school associations are actively discussing bullying (including cyber-bullying) and that there are a number of resources available (as outlined in Appendix A). However, greater public awareness and discussion is required around cyber-bullying. This could be achieved through television, print media and social media campaigns.

Option 2 around the mid-range cyber-bullying law and New Zealand *Harmful Digital Communications Bill*, appear incredibly sensible. Giving the options of lesser penalties such as counselling, restorative justice and community-based orders need to be a core tenant of any new legislation. The intent of this legislation does not need to be punitive. It needs to be relatively easy to enact, and provide mechanisms for the perpetrator to understand the impact of their actions on others.

**Question 23 and 24:** The establishment of a civil enforcement regime appears to have a number of advantages including:-

- provision of an avenue for rapid and constructive action against cyber-bullying that does not require the involvement of the criminal justice system (except in extreme circumstances).

- Provision of a proactive avenue for schools to pursue action against cyber-bullying.

- Greater potential for a perpetrator to gain understanding of the impact of their actions and be provided with greater resources to assist them to refrain from cyber-bullying.

Again, the real power in a civil enforcement regime will be in raising awareness of its existence and powers among schools, parents and directly to children.