

# **Australian Government**

## **Department of Communications**

### **Enhancing Online Safety for Children**

*Susan McLean*

Member of Victoria Police 27 years

Certificate in Child Safety on the internet – UCLAN UK

Protecting Children Online Certificate – 2007/2012 USA

Member Federal Government Cybersafety Working Group

Member National Centre Against Bullying (NCAB) Cybersafety  
Committee

Member of Expert Data Base – Safer Internet Programme Europe

Certificate IV Workplace Training and Assessment

#### Contents:-

Background of Author	Page 2,
Introduction	Page 3,
Adolescent Brain Development	Page 3,4,5
E-safety Commissioner	Page 5,6
Rapid removal of content	Page 6,7,8,
Commonwealth Legislation	Page 9,10
Conclusion	Page 10,11.

**Australian Government**  
**Department of Communications**  
**Enhancing Online Safety for Children**  
**Submission by Susan McLean**

**Background of author:**

I was a member of Victoria Police for 27 years and was the first Victorian Police Officer appointed to a position involving cybersafety and young people. I have had extensive experience in dealing with online abuse issues, having taken my first report of cyberbullying in February 1994. I established and managed the Victoria Police Cyber Safety Project that researched and reported on the issues on online abuse and young people and those adults with an intellectual disability. I have had extensive international experience and training in this field and I am the only person in Australia with my experience and qualifications. I have obtained qualifications in both the USA and the UK and in the past two years I have personally conducted over 492 hours of presentations to children under the age of 18 years and 152 hours of presentations to parents. I would receive on average 4 phone calls and 12 emails per week from either a student and or/parent seeking my advice and assistance with an online issue and I would received another 10 enquiries per week from school staff seeking advice as well. This advice is given freely and at no cost. I often need to engage the services of local Police to further investigate a matter disclosed to me where Police intervention is appropriate. I am passionate about the online safety of children have no affiliation with any organisation. My submission is a personal comment based on my own extensive experiences and I do not act as an agent for any other organisation.

## **Introduction:**

An October 2006 study tour to the United States of America as well as subsequent research conducted in Australia and the completion of a university course in the UK have highlighted to me the growth in popularity of internet technology, especially with youth, which has seen cyber bullying, sexting and harassment emerging as the number one issue confronting the safety and well being of young people and the wider community. Together with associated technology including 4G mobile telephones, video streaming such as You Tube, 'live' gaming sites, virtual worlds, the explosion of social networking sites and communication apps such as Facebook, Twitter, Instagram, Tumblr and KiK, today's youth have access to and are accessible by many millions of people worldwide.

Australians love their smartphones, with nearly 10 million more to be in use by 2015, taking the total number of smartphone users to 18.5 million, according to new research from Telsyte. In 2015 nearly 90% of all mobile phone users will have a smartphone as their primary mobile device, up from just under 50% in 2011. A study released in September 2011 found that Australia has the second highest smartphone usage by population density in the world, ahead of the US, the UK and Japan, and second only to the city/state of Singapore (IPSOS Research on behalf of Google). Two in five Australian smartphone owners use their device to search daily, which exceeds the equivalent usage in the UK and Germany.

## **Adolescent Brain Development**

There is strong research evidence to suggest that adolescents in general and male adolescents in particular, are developmentally less able to make informed decisions about personal safety and security than are adults. The US National Institute of Mental Health (2001) reports that MRI studies are shedding light on how teens may process emotions differently than adults. These studies have shown the remarkable changes that occur in the brain during the teen years, and also

demonstrate that the teenage brain is a very complicated and dynamic arena, one that is not easily understood.

The American Bar Association (ABA, 2004), Juvenile Justice Centre released a report that considered the new understanding of adolescent brain development to explore the issue of criminal culpability.

The article quotes Jay Giedd, a researcher at the National Institute of Mental Health, who explains that during adolescence the:

*[P]art of the brain that is helping organization, planning and strategizing is not done being built yet... It's sort of unfair to expect [adolescents] have adult levels of organizational skills or decision making before their brain is finished being built.*

Dr. Deborah Yurgelun-Todd of Harvard Medical School has studied the relation between these new findings and teen behaviour and concluded that adolescents often rely on emotional parts of the brain, rather than the frontal lobe. She explains, “*one of the things that teenagers seem to do is to respond more strongly with gut response than they do with evaluating the consequences of what they're doing.*” Also, appearances may be deceiving:

*Just because they're physically mature, they may not appreciate the consequences or weigh information the same way as adults do. So we may be mistaken if we think that [although] somebody looks physically mature, their brain may in fact not be mature.*

This discovery gives us a new understanding into juvenile delinquency. The frontal lobe is “involved in behavioral facets germane to many aspects of criminal culpability,” explains Dr. Ruben C. Gur, neuropsychologist and Director of the Brain Behavior Laboratory at the University of Pennsylvania.

*Perhaps most relevant is the involvement of these brain regions in the control of aggression and other impulses... If the neural substrates of these behaviors have not reached maturity before adulthood, it is unreasonable to expect the behaviors themselves to reflect mature thought processes. The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable...Indeed, age 21 or 22 would be closer to the 'biological' age of maturity.” (ABA, 2004)*

It is clear from this new understanding of adolescent brain development that children, adolescents and the developmentally impaired need extra protection from the dangers present in ICT.

### **E-Safety Commissioner:**

I whole heartedly support the establishment of an E-Safety Commissioner but recognise the need to set clear guidelines and boundaries around the position. If every single online dispute is sent the way of this new position, it would simply implode. It is imperative however that there be a central person in charge of all online safety issues involving children to both streamline delivery of service, to respond as required when all other avenues have failed and to be able to quickly and easily communicate at a high level with those running the social networking sites regardless of where they are situated. The mish mash of different organisations many within Government needs to be addressed so that there is one clearly defined central place the public can find all information about online safety issues. I would also suggest that a comprehensive audit of all current cyber safety programs and their relationship to current issue must be undertaken. I routinely see schools commenting that the ACMA programs are too rigid to address specific issues of concern at a particular school, are prescriptive and a one size fits all approach. I am also concerned that ACMA presenters and representatives do

not give a clear message to students, teachers and parents that where a site is age restricted they or their children should **NOT** be on it. If this particular issues is not addressed then the E-Safety Commissioner will be inundated with issues that her or she should not be dealing with, because if the child was not on an age restricted site in the first place, the problem would not have happened. The E-safety Commissioner must be clear about obeying the sites terms and conditions of use in order to limit the problems.

I would however caution limiting the powers of the Commissioner to, by use of the definition, 'large social media sites'. I am unsure how this definition would be applied and note that many of the issues I deal with on a daily basis, occur on sites that may not fit this definition, meaning the Commissioner would have no power to order removal of harmful content from those sites which would render the role ineffective in this regard. The ability to seek urgent removal of harmful content must be across *all* social media/communication platforms, not just limited to a few. In reality, large sites like Facebook have comprehensive processes in place for quick removal of harmful content already and work actively in this area. My only complaint about that, but more commonly reports made to Twitter, is the inconsistency in response and the lack of application to local sensitivities as it often takes multiple attempts to get content down. I would like to see the E-Safety Commissioner have all things relating to child online safety under his/her control, not spread across various part of Government. My preferred option for the establishment of an E-Safety Commissioner would be Option 1 if funds are available or otherwise Option 2.

### **Rapid Removal of Material that is harmful to a child from social media sites:**

As noted in the discussion paper, many established social media sites have improved their reporting processes over the past years and mention must be made to acknowledge Facebook in not only improving reporting but establishing an office here in Australia making it much easier for aggrieved persons and the government to actively engage in dialogue if the need arose.

This is especially important to the function of law enforcement when they need to seek advice about preserving data and obtaining information critical to an investigation. Google too has an office in Australia whilst Twitter lags behind and is still extremely difficult to engage and deal with, a comment echoed by many in law enforcement that I have regular contact with.

In my opinion, if you are going to limit this to a simple numbers equation, then best option to use in relation to the definition of 'large social media site' would be by number of account holders based in Australia, however it would need to be a percentage of total users. There also needs to be an option for the E-safety Commissioner to engage with any social networking site that is identified as being problematic in Australia. By just limiting definition to numbers or those with an office here, it will be detrimental to the end result; ensuring that material harmful to children is promptly actioned and removed. Essentially the big three, Google, Facebook and Twitter have their reputation at stake and are more likely to comply (as they do already) with reports of this nature. I still remain particularly concerned with sites such as KiK, Ask.fm, Quoh.me, Spring.me, SnapChat, etc., and the many more in the future, which have limited reporting mechanisms and are almost impossible for law enforcement to engage with in relation to evidence when a crime has been committed. This must not be overlooked as it is within these sites that some of the worst cyberbullying occurs. If law enforcement cannot engage with them, that leaves little hope for an Australian Citizen.

I endorse the proposal for both a parent of a child under the age of 18 years or a teacher/guardian/carer to be able to lodge a complaint on behalf of a child. I also believe that a child over the age of 13 years (the legal age to be an account holder on most social networking type sites per the COPPA) is also permitted to make a complaint themselves.

In order for the complaint system to avoid being bogged down there will need to be clear guidelines about how to make a complaint in the first place and the procedure to be followed prior to the involvement of the E-Safety Commissioner. Often when families come to me with issues about the failure

for a site to respond, it is because the report was not made correctly in the first place. Many have not asked the person who posted the offending material to remove it either which must be considered as part of the due process prior to the involvement of the E-Safety Commissioner. It is therefore incumbent of all sites to ensure that their reporting processes are simple and easy to navigate, but this process must be also made available via the Office of the E-Safety Commissioner's web page, with step by step instructions for each site.

In order for the E-safety Commissioner to investigate there must be a process to be followed first and then dependant on the circumstances, a complaint may be able to be made to the commissioner. Receipt of the initial complaint would need to be provided as would the unsatisfactory response. Whilst I believe that 48 hours is a realistic time for sites to respond to complaints with an initial acknowledgment of the complaint sent immediately I do not believe that this would be workable for the sites involved. Many sites 'triage' their complaints already so that those at the more serious end are actioned quicker. I think that 72 hours would be a more realistic time frame for removal of content unless it was something that warranted quicker action such as images of child abuse or threats of self harm, which I would like to see this actioned within 24 hours.

I believe that the test of **'material targeted at and likely to cause harm to an Australian child'** is appropriate as often the reasoning for failure to remove content is that it does not breach the terms and conditions of use and that the sites do not censor for bad taste whether harmful or not. This must change in order to protect Australian Children. Sanctions that cover the individual who initially posted the content should also be considered.



## **Options for dealing with cyberbullying under**

### **Commonwealth Legislation:**

Whilst I agree that many people do not understand the term, 'carriage service' this could be easily addressed by way of education. I do agree however that a new simplified offence that contains the word 'cyberbullying' would be meritorious in both acknowledging this behaviour as a serious issue and to expand the general public's knowledge of the fact that there are laws applicable to cyberspace. Whilst I do not want to see a large increase in young people negatively affected by the criminal justice system, there most certainly are cases where the involvement of law enforcement is correct and the behaviour most definitely criminal. I do not think that mixing civil and criminal sanctions will work, but would prefer a range of options including judicial discretion in any new law. In many states there is the option for a Police Caution to be given in cases involving people under the age of 18 years and at the lesser end of severity.

This process involves the acknowledgement that they admitted to the alleged action/behaviour and a stern warning that the behaviour was criminal and if repeated they would face the possibility of being processed through the criminal justice system. For a second offence there could be an option for a Penalty Notice to be given (police discretion and admission of guilt) and then for recidivist offenders the matter would proceed to court where there would be a comprehensive range of judicial options available to the presiding magistrate or judge including no conviction recorded, fines, community service, probation or attendance at educational programs. There should be no provision for jail in this new offence as it would be meant for the less serious examples of cyberbullying. High level cyberbullying, harassment and stalking would continue to be prosecuted through use of current legislation. I also support the introduction of a similar of not the same 10 communications principles to guide law enforcement, the court or other relevant body, especially 'encouragement to commit suicide' that New Zealand are planning

to adopt. These send a very clear message as to what is unacceptable digital communication.

I support the introduction of a mid-range cyberbullying offence that is applicable when the victim is under the age of 18 years. What might also be useful is one offence (a) where both victim and offender are under 18 years of age and a further provision (b) where the offender is over 18 years and the victim is under 18 years of age.

*did use a form of electronic digital communication being  
..... in a way that was likely to or did cause harm to a  
person under the age of 18 years namely .....*

One consideration to the merging of criminal and civil sanctions is the issue that historically there is a cost involved when utilising the civil process. This would have to be removed so that this process, if adopted was not cost prohibitive. Also if a 'defendant' needed to seek legal advice for a matter he/she was involved with, as it currently stands, the Legal Aid service does not provide advice or assistance for a defendant when the matter is civil or before any tribunal. Community Legal Services do provide advice in both civil and criminal matters, but do not usually represent a defendant in a civil matter so this would need to be addressed so that the defendant did have access to legal assistance if required and where cost was a factor in accessing paid legal advice. The same cost issues would apply to a victim/plaintiff as well.

## **Conclusion:**

I acknowledge the work of the current Government in addressing the issue of improved cyber safety outcomes for young people, something which has been overlooked for far too long and something that was not adequately addressed under the previous Government.

I support in principle all considerations contained within the discussion paper but have outlined my concerns about some of the proposals, especially in

relation to the rapid removal of harmful content and the limiting of this to 'large social networking sites'. I support the provision of new legislation for mid level cyberbullying and further acknowledge that any changes would need to be back by a comprehensive cyber safety education program. I would also support the inclusion of cybersafety education as a key component of the National Curriculum. If problems can be reasonably prevented, this is far better than simply reacting afterwards.

There can be no doubt that the posting of harmful and hurtful comments, pictures and posts can cause significant harm to individuals, especially children and the longer they remain the more harm they cause. Mental Health issues can be magnified when online abuse is involved and this does of course lead to often tragic consequences. Where the primary vulnerable population is children, adults have an obligation to act.