Enhancing online safety for children: Public consultation on key election commitments
Submission from Early Childhood Australia

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About Early Childhood Australia

Early Childhood Australia (ECA) has been a voice for young children since 1938. We are the peak early childhood advocacy organisation, acting in the interests of young children, their families and those in the early childhood field. ECA advocates to ensure quality, social justice and equity in all issues relating to the education and care of children from birth to eight years.

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Introduction

Early Childhood Australia (ECA) advocates for children birth to eight years of age. We understand that the prevalence of cyberbullying is not significant at these ages. However, increasingly, technology is being used by very young children, including the use of online applications (apps), tablets, phones and computers. This means that children's approach to technology and the internet is being established early and this exposure can shape future behaviour online. The early childhood education and care (ECEC) sector, which includes preschools, kindergartens, long day care, family day care, mobile services and outside school hours has a role to play in supporting the development of positive behaviours.

Children's resilience in dealing with their peers is also established early, meaning that strategies adopted in the early years can help to build children's resilience to all forms of bullying including cyberbullying. The ECEC sector, together with parent education and family support are therefore important components of a holistic preventative response to the issue of cyberbullying.

Early education

While most cyberbullying may be occurring after the age of eight, engagement with children should occur at the earliest opportunity before children are potentially using social media and communicating online. Parents, educators and teachers are best placed to assist the child to understand how to safely engage online.

Children's engagement with social media often begins earlier than expected without the knowledge or guidance of parents and this early behaviour can be strongly influenced by their peers and older siblings (ACMA, 2009, p. 51).

The proportion of children from five to eight years old visiting or using social networking sites has increased by 11.2 per cent from 2009–2012, with the use of chat rooms, forums or instant messaging increasing by 17.4 per cent (ABS, 2012).

As children increasingly engage online, it is vital that children, parents and teachers are equipped to provide children with the skills they need to engage safely online.

The Allanah and Madeline Foundation's e-smart schools initiative is particularly welcome in spreading awareness of cyberbullying and putting in place effective strategies to deal with these issues. However, as noted by Professor Karen Vered, Department of Screen and Media, Flinders University, this needs to start earlier than school education:

Of course, it seems sensible that schools introduce cybersafety when they introduce computers and online access. Unfortunately, it is just too late, because children have already developed a set of habits and practices (Vered, 2011, pp. CS36–37).

ECA recommends that education on technology use and positive behaviours should start during early childhood. We have identified three mechanisms for this:

1. Build the capacity of ECEC services and early childhood educators to teach positive behaviours relating to technology and online activity

2. Identify developmentally appropriate strategies to support the development of positive behaviours in the foundation year of school and the early years of primary (five to eight years)

3. Support and educate parents on how to nurture children's early engagement with online communication technology and interactions with other children.

ECA is currently undertaking a project to develop a Digital Business Kit for the ECEC sector. This project has begun with a comprehensive survey of technology capacity and utilisation in the sector which tells us that current capacity is not strong and more support is needed to equip services and educators with the skills they need to provide children with foundational skills in electronic and online literacy.

ECA supports the Recommendation 1 of the Parliamentary Joint Select Committee on Cyber-Safety's Interim Report *The high-wire act: Cyber safety and the young* (2011, p. 33) but we would like consideration to be given to extending this to other early childhood service types such as long day care and family day care.

> *Recommendation 1: That the Minister for School Education, Early Childhood and Youth consider the feasibility of assisting preschools and kindergartens to provide cyber-safety educational programs for children as part of their development activities.*

There is a strong argument for the delivery of educational programs regarding cyber-safety in all services under the *National Quality Framework* (NQF) and *Early Years Learning Framework* including centre-based long day care and other ECEC services as well as preschools and kindergartens.

Children and resilience

Approaches to building children's skills in technology use must also be coupled with the development of children's socio-emotional skills. Children begin to develop resilience at an early age and this assists them to overcome adversities and supports their mental health and wellbeing now and into the future. Risk factors which signal poor resilience can be identified in early childhood and addressed, reducing the risk that they become significant problems later in life. A greater focus on

socio-emotional skills like resilience supports children to better manage relationships with their peers and resolve conflicts which may include future incidents of cyber-bullying.

ECA is a partner with Beyond Blue, the Department of Health and Ageing, the Australian Psychological Society and the Principals Institute of Australia in the KidsMatter initiative—a mental health and wellbeing framework for primary schools and ECEC services. This project focuses on socio-emotional wellbeing and building resilience in children. The framework assists early childhood educators to support children to:

- have a go at solving their problems
- talk to someone when they are bothered
- manage their feelings when they are challenged or upset (or be learning to)
- start to work out how others are feeling and predict how they might react
- ask for help when they need it
- ask for the resources they need
- find things they enjoy doing and follow their interests (Linke & Radich, 2010, p. 20).

While KidsMatter is a significant national initiative it is currently only reaching a small proportion of early childhood services. KidsMatter Early Childhood warrants significant additional investment to scale up and reach a higher proportion of services. There is also scope for additional and complementary strategies to be developed and delivered in early childhood settings which could specifically target preventing bullying, including cyberbullying as well as building self-esteem to provide some protection to children who may experience bullying at some time in the future.

Children's E-Safety Commissioner

ECA supports the Government's proposal to establish a Children's E-Safety Commissioner.

We would like to see an E-Safety Commissioner playing a role in developing education programs which supports parents and early childhood educators to assist children birth to eight to develop their skills and reflect on their behaviour online.

We support any of the options regarding the establishment of the E-Safety Commissioner except Option 4, as we are concerned about the oversight, accountability and legitimacy of a non-government organisation in performing the role of the E-Safety Commissioner. A non-government organisation may not be seen as independent in performing its duties. We are concerned that the level of government agency cooperation may also be difficult to establish. However, non-government organisations would be well positioned to partner with the E-Safety Commissioner to deliver programs supporting children, families and organisations to establish positive behaviours online.

Options for dealing with cyberbullying under Commonwealth legislation

Criminal offences

We agree with the statement in the discussion paper that more needs to be done to raise awareness about the existing law and its application to cyberbullying particularly amongst students, parents and teachers and law enforcement agencies. ECA supports stronger family engagement and early education as primary and secondary diversions from criminal prosecution and the juvenile justice system.

ECA is concerned about the level of culpability that would attach to children older than 10 from a new cyberbullying offence as proposed in the discussion paper.

We are particularly concerned that the threshold for culpability is much lower under the proposed newer offence than the existing offence under the Criminal Code; 'using a carriage service to make a threat'[1]. The existing offences require a 'threat to cause serious harm' or a 'threat to kill'[2] and includes the mens rea that the person 'intends the second person to fear that the threat will be carried out'.

In contrast, the lower level offence in the New Zealand Bill has the actus reus 'causes harm' to the victim which may take into account the relevant factors listed. The fault element is 'intention that it cause harm to a victim'.

The focus on 'threats' in the Criminal Code may not be consistent with all forms of what may be considered bullying behaviour online. However, conversely, the New Zealand offence asserts criminality at a much lower threshold than the Criminal Code provisions, particularly when considering the factors that may be taken into account in what causes harm.

We are concerned about a flood gates effect resulting from a New Zealand offence, which would result in more children having contact with the juvenile justice system. There is a strong body of research demonstrating that engagement in the juvenile justice system results in poor outcomes for children and any steps that can be taken to divert children from the criminal justice system at the earliest opportunity should be pursued. Ultimately, while children should be protected from harm associated with cyberbullying, this must also be balanced with the best interests of children engaging in the bullying. In particular, that 'the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'.[3]

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[1] Criminal Code 1995, Schedule 2, Cls 474.15.
[2] Criminal Code 1995, Schedule 2, Cls 474.15(2)(a), (1)(a).
[3] United Nations Convention on the Rights of the Child, Arts. 3, 37(b).

Civil enforcement regime

ECA recognises that tertiary level responses are still required to deal with the immediate instances of cyberbullying, and that this level of response has not been adequate in Australia to date. ECA therefore supports the proposal in the discussion paper for a civil enforcement regime.

While the civil penalties proposed deal with the immediate removal of material and cessation of conduct, it is also an important early intervention opportunity to stop engagement in cyberbullying in the future. We welcome the proposal that the E-Safety Commissioner should consider other actions that are appropriate to prevent cyberbullying. This should include consideration of:

- engagement with the family, with support to address any underlying issues
- engagement with mental health services and/or counselling for the child where appropriate
- complimentary school-based support plans.

We consider that effective diversion of the child from future conduct may require the establishment of other legislative tools for the E-Safety Commissioner, such as community based agreements to mandate engagement of the child and family with supports. These agreements would be sought by the E-Safety Commissioner if appropriate and as an alternative to criminal prosecution for cyberbullying offences. The focus of these agreements would be facilitating and mandating engagement in rehabilitation and support, rather than placing restrictions on conduct which is otherwise lawful.

We note the significant criticisms of Anti-Social Behaviour Orders (ASBOs) in the United Kingdom, particularly in relation to children with mental health issues. However, a lower level community based agreement, which is focused on supporting the child could be useful. This type of agreement would be targeted specifically at cyberbullying[4].

Recommendations

1. Build the capacity of early childhood education and care services and early childhood educators to teach positive behaviours relating to technology and online activity.

2. Identify developmentally appropriate strategies to support positive behaviours in children in the foundation year of school and the early years of primary (foundation to Year 2).

3. Support and educate parents on how to nurture children's early engagement with online communication technology and interactions with other children.

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[4] This specificity may also be consistent with Commonwealth's heads of power.

4. Invest nationally in children's socio-emotional development to build resilience and protective factors against the impact of bullying, including continued expansion of the KidsMatter Early Childhood initiative.
5. Establish the E-Safety Commissioner in a government agency auspicing early intervention programs aimed at cyberbullying, as well as enforcement regime.
6. A civil enforcement regime is supported to prevent immediate harm and future conduct, while ensuring that children are diverted from juvenile justice.
7. Consideration should be given to community based agreements for children who engage in cyberbullying which facilitates their access to support services.

References

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