



FAO, The Director,  
Cyber Safety Policy & Programs  
Department of Communications  
GPO Box 2154  
Canberra ACT 2601

Dear Director,

Please find below the responses to your consultation on enhancing online safety for children from the NSW Parents' Council. We welcome the opportunity to be part of the consultation as we have long had concerns that children are not adequately protected from the risks thrown up by modern media and social interaction through existing authorities or legislation.

Our responses emphasise our view that there is a need to provide improved child protection and remedies for the victims as well as appropriate remedies for perpetrators. Parents, schools and families have had to struggle to adjust to the rapidly changing technology available to children and the new opportunities, challenges and often unforeseen problems it throws up. We regularly have parents asking us for advice and suggestions on what they can do about cyber-bullying and cyber-safety affecting their children and we welcome the government's intention to take action to put more safeguards in place and establish responsible 'ground rules' for social media sites.

As an organisation representing parents, we have little sympathy for the arguments made by social media platforms about the difficulties of policing themselves. They are, after all, commercial enterprises that generate income through advertising and other commercial activities, and child protection measures should be seen as an integral and legitimate component of their operating costs. The current poor performance of some of these platforms in addressing these problems makes government intervention both desirable and necessary.

Kind regards

Stephen Grieve, President

**NSW Parents' Council Inc**

*Representing parents of non-government school students in NSW since 1962*

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### **Background of the NSW Parents' Council**

The NSW Parents Council (NSWPC) is the peak state body representing parents of children who are educated in non-government schools. The NSWPC was founded in 1962 and has, for almost half a century, represented the concerns of parents to State and Federal Ministers of Education and participated in numerous reference committees relating to curriculum development and student welfare. We currently have a parent representative on the Board of Studies.

Our supporting principles are:

1. Children are entitled to an education which will enable them to attain their full potential.
2. Parents have the primary responsibility to educate their children. They are the first and foremost educators of their children, and the family is the first educative 'school' or 'community' to which children belong.
3. "Parents have a prior right to choose the kind of education that shall be given to their children" (The Universal Declaration of Human Rights, clause 3, article 26).
4. As a result of the importance of the school in a child's education, parents have the right and duty to choose schools which they consider best suit their children's schooling requirements.
5. Parents are entitled to exercise their right of choice of schooling for their children without financial or other disability being imposed on them or on their children by any Government.
6. Schools exist to help parents discharge their educational responsibilities, and there should be harmony between the philosophy and values of the home and those of the school.
7. Governments, as protectors of the rights of citizens, should assist and encourage, not restrict, parents' exercise of their right to choose schools which they consider best suit their children's needs.
8. As a result of their fundamental obligation to protect and promote the rights of all citizens, Governments have responsibilities in relation to schooling for all children, not just for those attending government schools.
9. The child, not the school, should be the focus for the allocation of public funds for schooling.
10. A Basic Funding Entitlement, calculated as a percentage of the total per capita recurrent cost of schooling in government schools, is a real implementation of the parents' right of choice of school and the right of every child to an equitable share of public funds for schooling.
11. For students who are experiencing specified educational disadvantages, their schooling costs should be assessed and more public funds made available, in addition to their Basic Funding Entitlement.
12. Governments should acknowledge and support the valuable role of the family in society, and parents in the learning partnerships with schools.

The following are our response to the specific questions in the consultation document.

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

The Commissioner should take over responsibility for all current programs & powers (other than then Police powers to investigate suspected crimes) that directly relate to minors, working closely with ACMA and other authorities and departments. This delineates clearly the Commissioner's sphere of activities and avoids duplication.

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

Option 4 an NGO with expertise would balance independence with expertise would be first choice

Option 3 Subsidiary of ACMA would be another option as activities of Commissioner dovetail into current activities of ACMA

Q3 Are these definitions of 'social networking sites' suitable for defining 'social media sites' for the purposes of this scheme? No: It should also include all hosting media, including smartphone platforms.

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

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? Should also include the term "facilitates multiple user interaction and facilitates the sharing of data with other platforms" to cover smaller sites that allow sharing via larger platforms. It is also worth considering so called "walled garden" that are limited social media platforms but could still be the inadvertent host of material 'harmful' to a child.

Q6 Is the coverage of social media sites proposed by the Government appropriate and workable? Depends on the definition of workable. It may be cumbersome or vague in a legal courtroom setting, but the adverse publicity and effect on reputation may achieve the desired end therefor"work" in practice even if not so well in theory.

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? Yes but unsupported children in both situations should be given the option of an independent legal guardian (there may be extreme situations taken on merit where the parent or guardian are not immediately available and a minor should always have an independent adult advocate.)

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?



This does not allow for complaints from anonymous sources, or from third parties not intimately familiar with the child being harmed or doing the harming for that matter. It is not the source of the complaint that should be the focus but the harm or potential that is being done. If this is the case, to facilitate child protection, the system should allow for anonymous and third party complaints, including watchdogs, NGO's and police, to be investigated.

- Q9 How would an eligible complainant demonstrate that the complainant has reported the content to the participating social media site? **Pre-requisite from all sites to have an automatic complaint acknowledgement system in place. So evidence of either making a complaint or an acknowledgement would be sufficient. The sites should be responsible for adequately monitoring complaints to their own sites!**
- 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? **Too Long....material goes viral in minutes so the response also needs to be commensurate with the exponential potential for the harm to spread.**
- Q11 What level of discretion should the Children's e-Safety Commissioner have in how he/she deals with complaints? **As with ACMA all complaints should be investigated. We are talking about harm to children and it is not acceptable to use 'discretion' without independent investigation when protecting children. Think Royal Commission into child abuse....complaints need to be taken very seriously. But at the same time, vexatious or malicious complainants should face sanctions as a disincentive.**
- Q12 What is an appropriate timeframe for a response from the social media site to the initial referral of the complaint? **12 hours or sooner**
- 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? **See note: the proposals shouldn't preclude 'self-harm'.**
- Q14 Is the test of **'material targeted at and/or likely to cause harm to an Australian child'** appropriate? **Some material may not be targeted at an Australian Child but still be likely to cause harm to one: it is the effect that should be targeted rather than the intention.**
- Q15 What is an appropriate timeframe for material to be removed? **Immediately (as soon as practicable but within 24 hours)**
- Q16 What would be the best way of encouraging regulatory compliance by participating social media sites that lack an Australian presence?<sup>1</sup> **Could take sanctions and deregister subsidiary companies in Australia if non compliance by parent companies. Ban advertising for example by companies that don't comply.**
- 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? **Yes, a safe harbour as per New Zealand**



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is more likely to encourage compliance – carrot rather than stick is probably more effective in getting social media hosts to take child protection measures on board more willingly

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? **Yes because it is relatively independent and can give a third party view.** What are the alternatives? **Appeal to the commissioner would be quicker and more cost effective as the commissioner would be familiar with case details and could quickly take new submissions, information etc into consideration.**

Q19 What do industry representatives consider are the estimated financial and administrative impacts of compliance with the proposed scheme? How are these estimated impacts derived? **Not appropriate for us to speculate or comment, other to say that social media sites are commercial enterprises which generate income from advertising and child protection appears to be a legitimate inclusion in their operating costs.**

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? **It seems more appropriate to have a legislation that directly identifies cyberbullying as a crime. This leaves no room for semantics. The definition should identify the effect of the crime, not just the intention, so should spell out material "likely to cause harm to a minor"**

Q21 Is the penalty set out in section 474.17 of the Criminal Code appropriate for addressing cyber-bullying offences? **Cyberbullying legislation should include appropriate remedies and punishments for minors. The emphasis should be on protecting minors from harm rather than punishment, especially when the perpetrators are minors themselves and may not have fully realised the implications of their actions or statements.**

Q22 Is there merit in establishing a new mid-range cyber-bullying offence applying to minors? **Yes. Because a significant number of perpetrators are likely to be minors and because it would allow them to be dealt within the juvenile justice system which is adapted to and far more conversant with youth issues and remedies. Also only very serious cases will be likely to be dealt with by police, and there is no doubt that cyberbullying in extreme cases can have serious consequences that are directly comparable to other forms of harassment that are dealt with by the law. Less serious cases are likely to be dealt with by the Commissioner.**

Q23 Is there merit in establishing a civil enforcement regime (including an infringement notice scheme) to deal with cyber-bullying? **Yes otherwise the Commissioner will be a 'toothless watchdog'.**

Q24 What penalties or remedies would be most appropriate for Options 2 and 3? **All those mentioned in the report + sanctions against subsidiary companies eg deregistration and banned advertising as mentioned earlier in this submission.**