

The Director
Cyber Safety Policy and Programs
Department of Communications
GPO Box 2154
CANBERRA ACT 2601

Dear Director,

Re: Discussion Paper on ‘Enhancing Online Safety for Children’

NAPCAN (National Association for Prevention of Child Abuse and Neglect) welcomes the opportunity to respond to the policy proposals outlined in the Department of Communications’ Discussion paper on ‘Enhancing Online Safety for Children’.

We commend the Department on prioritising the safety and wellbeing of Australian children and young people by seeking to strengthen the response to online bullying targeted at children.

NAPCAN is a national not for profit organisation that advocates on behalf of children and young people to promote positive change in attitudes, behaviour, policies, practices and the law to prevent abuse and neglect and ensure the safety and wellbeing of all Australian children.

NAPCAN’s strategy is to bring about the changes necessary in individual and community behaviour to stop child abuse and neglect before it starts by:

Promoting quality child abuse prevention research:

Promoting quality research so that the causes and impact of child abuse and neglect can be better understood and effective ways to prevent it can be developed and measured.

Advocating for child safe policies and strategies:

Advocating for changes in policies and strategies that place the wellbeing of children and young people first.

Coordinating National Child Protection Week and promoting the PLAY YOUR PART initiative:

Increasing public awareness of, and informing attitudes towards, the creation safe communities for children and young people making this a core concern shared by all Australians. To provide educational information and resources to ensure everyone has the knowledge and skills needed to take action in small or large ways to support children and families and reduce child abuse and neglect in Australia.

Demonstrating good practice:

Developing and promoting community led prevention programs and initiatives that are evidenced based and effective in reducing the risk of child abuse and neglect.

This submission is informed by NAPCAN's work with communities across Australia and the knowledge and expertise of staff. It also draws on NAPCAN's work with young people in the Northern Territory through the Consultation project "Indigenous Young People's Use of Technology in their Relationships" as well as our ongoing community and school based programming. This response does not cover all aspects of the proposals, or answer each of the questions, put forward by the Department but only those for which NAPCAN can provide expert guidance.

NAPCAN's key recommendations to the Department are to:

- establish a central point of contact in Government, such as an independent Children's e-Safety Commissioner, for both the public and industry as soon as practicable to deal with online safety issues, as well as educate the community about the cyber-safety and existing mechanisms for redress;
 - should focus on drawing together existing resources and better coordinating initiatives across Federal Departments and State and Territory Governments.
- introduce civil penalty to act as a deterrent for cyber-bullying behaviour, and as a viable recourse to victims of cyberbullying;
- coordinate community education on online safety, that is inclusive of children and young people, and especially focussed on building respectful relationships, through the role of the e-Safety Commissioner;
- promote education about existing laws for bullying and harmonising laws across Australian jurisdictions;
- ensure police responses and resources are adequate so that laws are properly enforced;
- fund and support research and its coordination with a view to evidence based policy decisions;
- work collaboratively with industry to maintain responsiveness to emerging technologies; and
- develop best practice guidelines to responding to cyberbullying, aimed at supporting those individuals most likely to be involved at the point of identifying a complaint such as parents, teachers, children and young people - so young people can receive the best possible support and outcomes.

NAPCAN appreciates the opportunity to contribute to this process. If you require any further information regarding our submission please do not hesitate to contact Rani Kumar, National Manager Policy and Research on 02 8073 3300.

Yours Sincerely,

Richard Cooke
CEO

Response to key proposals outlined in the Department’s Discussion Paper on ‘Enhancing Online Safety for Children’

NAPCAN’s response is structured by the three chapters contained in the Discussion Paper. We do not respond to each question posed but instead provide an overall response to the proposals under each chapter, where we would like to comment on a specific question it is clearly identified.

1. Establishment of a Children’s e-Safety Commissioner

NAPCAN supports the establishment of a Children’s e-Safety Commissioner (here in referred to as ‘Commissioner’) to operate within a child-rights focussed framework. As proposed by the National Child and Youth Law Centre (NCYLC) such a framework would encourage individual responsibility, personal resilience and self-help. Its primary considerations would be the best interests of the child, and its primary goal to minimise the harm to young people.¹

There is significant role for a centralised point of communication for the public and industry, who can coordinate activity across the Federal Government Departments and State and Territory Government’s. The Commissioner should have statutory authority for its operations and focus on coordinating existing resources and initiatives, as well as developing mechanisms for addressing the current gaps and enhancing the responsiveness of the system. In particular the Commissioner should:

- promote community education on online safety, especially the promotion on existing avenues for addressing concerns;
- work collaboratively with social media providers and the broader industry to stay abreast of emerging technologies and avenues to prevent and address arising concerns;
- conduct and promote research to inform the development of evidence-based best practice standards for responding to bullying. Research should include: face-to-face consultations with young people that allows for knowledge-building in partnership with young people;

It is important that the role of the Commissioner is conceived to be flexible enough to respond, in a timely manner, to emerging technologies and their impact on the lives and relationships of young people. It is evident that technology is going to be continually evolving, so it’s imperative that any centralised role - such as the Commissioner - that is involved in regulating these platforms, has the capacity to respond quickly to emerging technologies.

Online safety is one amongst many issues that impact on the safety, welfare and wellbeing of Australian children and therefore, the e-Safety Commissioner’s role should not supersede the work of the National Children’s Commissioner as an overall advocate for Australian children and young people.

In our experience, we’ve identified that the general public, including parents and teachers but especially children and young people, do not understand the current laws related to bullying and aren’t aware of their rights and responsibilities. They also aren’t aware of the

¹ National Child and Youth Law Centre;
http://www.alrc.gov.au/sites/default/files/subs/61.org_national_children_and_youth_law_centre.pdf, page 4.

tools and resources available to prevent and tackle cyberbullying, whether these are available online or through other face-to-face mechanisms such as school-based respectful relationship education programs. The Children's e-Safety Commissioner could enhance the awareness of existing laws, regulations and mechanisms for responding to inappropriate and concerning material online.

2. Rapid removal of material that is harmful to a child from social media sites

NAPCAN supports a legislative approach to ensuring that social networking sites are compelled to respond in a timely manner to requests to take down material that is harmful to an Australian child from a social media site, and that there is an independent party who can assess any disagreements between social media sites and individuals regarding content complaints. The definitions as proposed in the Discussion Paper appear adequate however it is important to reiterate that the scope of young people's online interaction - and experiences of cyberbullying in NAPCAN's experience goes beyond social media sites to online games and other apps and mediums and any regulation by an independent body should extend to cover these platforms. This includes mobile phones, smart watches, tablets, online games, and apps that currently exist but also allowing for emerging technologies as noted above.

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?

In relation to question seven of the Discussion Paper, NAPCAN is of the view that any child or young person should be able to be an active complainant, even in the absence of adult support assuming the appropriate protocols are in place as per existing services such as the Kids Help Line. They must be strongly advised, and well informed, of the value of informing their parent or carer, or in engaging the support of another adult.

Any child or young person, who is the recipient of a notice must be supported by an adult, whether a parent, carer or other relevant adult, in order to be an active participant in the scheme. Where there is no adult willing or able to support the child, the independent body assessing the complaint - such as the Commissioner - must appoint a Children's Advocate, as is available in other legal proceedings involving children and young people where there is a lack of adult support, to support the notice recipient. It would be in the child or young person's best interests to be supported by an adult to ensure they are able to work through the process towards an appropriate outcome without compromising their own well being.

The e-Safety Commissioner should be able to use their discretion in dealing with complaints to assess if there are frivolous, vexatious or not made in good faith. The reasons for their assessment must be made clear to the complainant and in the case of a child or young person explained to them verbally by a representative of the Commissioner.

There should be an appeals process available to both complainants and recipients of notices. NAPCAN is of the view that material that is deemed to fit the definition for removal, should

be removed within specified timeframes, and appeals would apply to it being reinstated, not to it remaining online during an appeals process. The appeals process should be structured to be easily accessible and promoted as part of the process so young people are aware they have recourse to this if need be.

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?

In relation to question 13, NAPCAN is of the view that the factors outlined as part of the proposed statutory test are sufficient in so far as the existing context.

Material on non participating social media sites should also be included where the perpetrator can be identified.

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

In relation to question 14, NAPCAN is of the view that the test of ***‘material targeted at and likely to cause harm to an Australian child’*** is appropriate. However each of the terms in the definition will need to be carefully explained and defined themselves. For example, in defining ‘targeted at’ the legislation needs to be clear that this would include material (such as a compromising photo) that is targeting a particular child but which is not sent to, or shared, with that child but with other individuals - and therefore is ‘targeted at’ the child without being directly shared with them.

There is also a need for clarity around defining what would constitute ‘harm’, and ‘Australian’. For example, in this definition would a child be considered ‘Australian’ only by their official citizenship or by their usual residence status. NAPCAN would advocate that an ‘Australian child’ in this context include any child whose usual residence is in Australia, regardless of their official citizenship status. There are also slightly different definitions of ‘harm’ or different ways in which ‘harm’ is referred to in the Discussion Paper, NAPCAN would advocate for a definition of harm as ‘serious emotional distress’, with application of this standard varying to account for the individual characteristics of the child, as outlined in the Discussion Paper under the proposed ‘statutory test’ on page 15.

In relation to the timing of the removal of cyberbullying material, NAPCAN supports the NCYLC in their assertion that, “...in the context of harmful online content about children, rapid takedown is synonymous with child protection²”, and therefore as soon as practicable.

An appeals or review process must be established as part of the Scheme, however it is beyond the scope of NAPCAN’s specific expertise to comment on the mechanisms for this.

² National Child and Youth Law Centre;
<http://www.alrc.gov.au/sites/default/files/subs/61. org national children and youth law centre.pdf>; page 5.

3. Options for dealing with cyber-bullying under Commonwealth legislation

It is NAPCAN's experience that the general community lacks knowledge of existing laws, and where they are aware of laws, there is a lack of understanding of the specific legal terms contained in them such as "use of a carriage service". NAPCAN supports a multi-faceted community engagement process aligned with any changes to the law. This would include a wide-ranging community education campaigns and programs to ensure that all members of the community can access information about new and existing laws and how the laws impact their lives.

Within the scope of this review of existing laws pertaining to cyber safety NAPCAN supports consistent laws across State jurisdictions.

From the options outlined in the Discussion Paper NAPCAN is supportive of Option 3 'Commonwealth civil penalty regime'. This is in line with NAPCAN's position that young people who have complaints registered against them should not be criminalised for their behaviour, but that statutory mechanisms must be in place to act as an effective deterrent for cyber bullying behaviour.

The current penalties are too severe for the Cyber Bullying crime and leads to no one being charged, so ineffective. A lesser penalty is necessary to account for cyber bullying between children and young people. The current criminal codes should still apply to adult offending behaviour (towards young people as well as each other). A civil penalty, with less aggressive penalties, will be more likely to be enforced in cases of cyber bullying between children which makes it more likely to prevent further harm.

A key strength of this proposed scheme is also that it covers a wider range of electronic communication, as it is reflective of the diverse ways in which young people use technology.

Any change in legislation and complaints processes will need to be accompanied by a multi-faceted, comprehensive community awareness campaign. In order for the laws to promote behaviour change in children, young people and the broader Australian community, people need to be able to understand them. The campaign would need to incorporate messaging targeted at different audiences in diverse ways, ensuring maximum coverage through off-line mediums as well as online.

These changes would also necessitate an increase in the capacity of law enforcement to respond to complaints in a timely manner. As more community members become aware of their rights, there may be a resulting increase in the volume of complaints and legal proceedings. This needs to be supported by the Government to ensure the police and the legal system are adequately resourced so that any new, and existing, laws are properly enforced.

In summary NAPCAN supports the establishment of an e-Safety Commissioner for Children, with statutory authority to direct the rapid take down of material deemed to fit the definition of 'cyberbullying'. The Commissioner should be the central point of contact for the public and

industry, as well as promoting the coordination of policy, law and practice across jurisdictions. NAPCAN supports the introduction of a civil penalty regime for dealing with cyberbullying offences, with a mid-range penalty introduced for repeat offenders.

NAPCAN recognises that any legislative and procedural regime is likely to be insufficiently flexible to respond quickly to technological advances and shifting consumer preferences, particularly amongst young people. Therefore we recommend that a core function of the Commissioner's role would be to develop and implement a comprehensive community education program that would educate the public, including children and young people, not only about the legal mechanisms to address cyberbullying but also about how to respond effectively and safely to inappropriate material online. The development of evidence-based best practice guidelines on responding to cyberbullying aimed at key groups such as parents, teachers, children and young people would be highly valuable. The purpose of these initiatives would be to build the capacity of children and young people to conduct respectful relationships that extend across face-to-face and online interactions. It is impractical to rely on legal and policy mechanisms to address all cases of cyberbullying, which is why resources should be allocated to campaigns to prevent cyberbullying concurrently with the establishment of more efficient and clear complaints processes.

NAPCAN is grateful for the opportunity to present our views on the proposals outlined in the Department's Discussion Paper on 'Enhancing the Safety of Children Online'. We look forward to continue working with the Federal Government on ensuring the safety and wellbeing of Australian children.