



## *Enhancing Online Safety for Children Discussion Paper*

Queensland Catholic Education Commission submission

7 March 2014

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### **Overview**

The Queensland Catholic Education Commission (QCEC) welcomes the opportunity to respond to the Australian Government's *Enhancing Online Safety for Children* discussion paper.

The QCEC is the peak Catholic education body in Queensland for 22 Catholic schooling authorities, representing 297 Catholic schools and 143,000 students.

This QCEC submission is informed by written submissions from two diocesan Catholic education offices (Brisbane Catholic Education Office and Catholic Education Services, Cairns) and verbal input from members of the QCEC Student Protection Working Party and QCEC ICT Subcommittee. The specific responses to each question are listed in the following order: Brisbane Catholic Education Office response followed by the Catholic Education Services, Cairns responses (boxed responses up to Q.16). Where appropriate a QCEC summary view is provided at the end of responses in blue italics.

Catholic school authorities and schools in Queensland have established policy frameworks and implemented professional development programs and forums to address cybersafety issues for staff, parents and students.

The QCEC has worked collaboratively with the Cybersafety and Reputation Management branch of the Department of Education, Training and Employment (DETE) Queensland to establish QCEC Social Media Escalation Protocols for the Queensland Catholic sector in 2012. These protocols incorporate direct relationships with large social media network companies with regard to specific requests for the removal of highly inappropriate online material that breaches the associated terms and conditions of the social media services and places student safety and wellbeing at risk.

The QCEC looks forward to the outcomes of the discussion paper consultation processes particularly in relation to potential future measures that will enhance the safety of children as they continue to interact in ever increasing ways in online environments.

### **General Comments – Brisbane Catholic Education**

Brisbane Catholic Education (BCE) is fully committed to the safety and wellbeing of children and young people attending BCE schools and welcomes the Australian Government's commitment to establish measures to improve the online safety of children in Australia. BCE in principle supports the establishment of a Children's e-Safety Commissioner, the rapid removal of material harmful to children from social media sites and the commitment to address the issue of cyber bullying at a national level.

It seems unrealistic to achieve the goals of the proposed legislation without the allocation of dedicated resources. Any Commissioner needs to operate with independence, jurisdiction, powers, accessibility, procedural fairness and accountability.

Limiting the scope of the measures to participating large social media sites is likely to miss the management of significant harmful material posted online and does not offer the flexibility to cope with new and rapidly emerging social network sites.

The approaches detailed in the discussion paper are mostly reactive. Resources need to be allocated to proactive education and prevention programs. It would be disappointing for such a significant initiative to have its functions limited to 'fixing' rather than prevention. Fixing the problem after the fact should not be the only focus of the proposed role and functions of the Commissioner. Education of parents is also important as is early intervention education programs for children. Education and awareness raising is needed in relation to responsible and appropriate use of digital technology and how to be a responsible and effective digital citizen. Programs should also incorporate digital ethics.

Besides education for prevention, children and young people need to be educated to manage the risks associated with use of social network sites including legal literacy around privacy law, intellectual property rights especially copyright infringement, criminal matters such as harassment and distributing offensive material or illegal material. Online safety is broader than cyberbullying.

The place of an educational agency such as a Catholic education office is not included in the categories of people who are eligible to make a complaint about harmful material directed towards a child. Is it envisaged that an educational agency be considered in the category 'another adult in a position of authority in relation to the child' given their role in relation to student protection?

## 1. What existing programs and powers should the Commissioner take responsibility for?

All the resources and programs (including research) currently funded and managed through disparate agencies should come together under the one jurisdiction of the Commissioner, for example; ACMA, E-Smart, Bullying No Way, National Safe Schools Framework, Cyber-Safety Help Button, Connect-ED program, ARC and ARACY research committee.

Alternatively, the Commissioner should map all available programs, research and resources and provide oversight in the form of quality assurance and evaluation of the resources available to individuals, parents and schools. Access to such resources should be provided through a central portal.

The function of the Commissioner should be expanded to include having an avenue to hear directly from children and young people about the issue of cyberbullying and suitable mechanisms for preventing and resolving issues.

We would agree with the aspects outlined in the paper regarding the responsibilities of the commissioner. We would also suggest the “Report Abuse” also remain with a law enforcement body.

It would be important for the existing programs to continue however it would be advisable for the Commissioner to have some oversight of these programs in order to promote the best deliverables without duplication.

*In summary, there would appear to be some consensus around the proposed Commissioner having oversight of programs whilst providing seamless access to resources as well as an avenue for student voice. In addition the QCEC ICT Subcommittee suggested that the Commissioner should take on the function of escalated requests from authorities. QCEC has existing workflows to remove harmful content and would be happy to work with the Commissioner to establish integrated and/or rationalised response mechanisms.*

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

Option 2. This option appears to blend appropriately the relative independence of the Commissioner with resourcing from government agencies with experience and established networks in the area of digital communications, including safety. ACMA may be better placed to achieve the functions of the proposed Commissioner.

We would suggest Option 4 as the best way forward. This will allow greater flexibility and capacity to respond to need. It needs to be acknowledged that the concern listed relating to “enforcement” functions would need to be addressed and appropriate channels to law enforcement would need to be built into the structure.

*Both Option 2 and Option 4 are suggested for consideration.*

**3. Are these definitions of ‘social networking sites’ suitable for defining ‘social media sites’ for the purpose of this scheme?**

No. Such definitions would not necessarily capture sites like Flickr, Bebo and Tumblr, game sites with networking or chat capability or wikis, blogs, message boards and YouTube.

It should be noted that Boyd and Ellison specifically use the term social network (as opposed to 'networking') sites. Their article explains this differentiation. The definitions may limit recognition of material from sites other than the current commonly recognised sites. Another suitable definition is that of the European Union which is more comprehensive and includes:

- A platform that promotes online social interactions between two or more persons for the purposes of friendship, meeting other persons, or information exchange;
- Functionality that lets users create personal profile pages that contain information of their own choosing, such as the name or nickname of the user, photographs placed on the personal page by the user, other personal information about the user and links to other personal pages on the service of friends or associates of the user that may be accessed by other users or visitors to the service;
- mechanisms to communicate with other users, such as a message board, electronic mail or instant messenger; and
- tools that allow users to search for other users according to the profile information they choose to make available to other users.<sup>i</sup>

The Boyd and Ellison’s definition of social networking sites appears to encompass what is in existence and provides capacity to include future developments. The definition provided by the Office of the Australian Information Commissioner uses language that is commonly understood and instantly recognisable.

*The QCEC ICT Subcommittee also considered that the definition was reasonable however one authority has proposed consideration of the more comprehensive definition of the European Union.*

**4. Should the proposed scheme apply to online games with chat functions?**

Yes. Many students network through the chat function of games, for example many primary school students network through 'Club Penguin'. Older students access MMOs (massive multiple player online games) such as Guildwars and World of Warcraft which have chat rooms and discussion boards attached.

We would recommend the inclusion of online games and chat functions within this scheme.

*The QCEC ICT Subcommittee also agreed that the proposed scheme apply to online games with chat functions.*

**5. 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?**

Large social media sites, however defined, is an inadequate point of reference for the work of the Commissioner. Rapidly shifting trends in popularity of various sites and the types of sites that appeal to children and young people across a range of ages (see 4 above), mean that the jurisdiction of the Commissioner should not be limited to large social media sites or those that volunteer if not 'large'.

User account numbers would seem to be the best mechanism to define a large social media site. The listing of participating social media sites would provide encouragement for those sites not covered by the large site definition.

*Whilst there is a view that the number of users may contribute toward the identification of a 'large' social media sites there is another view that dynamic nature of the area requires more flexibility to embrace current and future social media sites where children may engage in online activity. The QCEC ICT Subcommittee considered that for schools the coverage of social media sites is appropriate because schools will use other mechanisms to block access to other non-participating social media sites.*

#### **6. Is the coverage of social media sites proposed by the government appropriate and workable?**

No. It does not appear to be comprehensive enough to cover sites like Tumblr or Snapchat or meme generators, Imgur and ask.fm which can be used to generate and distribute harmful material, often anonymously.

We believe this proposal is both appropriate and workable.

*There are contrary views on the issue of social media coverage.*

#### **7. 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, children should be allowed to access the scheme unsupported by adults; however, the Commissioner should ensure a process which enables an assessment of the child or young person's ability to effectively self-advocate based upon an informed consent process. Students can already access support such as through the Cyber-safety Help Button without the support of an adult. Recent research found that 46.1% of surveyed students did not talk with their parents about their social networking site use and 74.6% did not discuss use with teachers.<sup>ii</sup> With such apparent reluctance to involve adults it would be of assistance to protecting children and young people from harm to have an easily accessible pathway for them to access the scheme. Involvement of an appropriate adult for follow up is desirable.

We would suggest that children under the age of 18 be able to make a complaint as the most vulnerable children often do not have ideal support structures. In contrast we would suggest notice recipients would require adult support in all cases.

Clarification is required regarding the statement “If the complaint has been lodged by a parent, guardian or another person in authority, the consent of the child that is the target of the harmful material would need to be obtained.” This does not appear to have the best interests of the child at heart, given the possible reluctance to report in the first instance and possible damage to existing trusting relationship i.e. teacher/student.

*There is agreement that the scheme allow children unsupported by adults to be active participants with some qualifications.*

**8. 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?**

- Name, address and contact details of the complainant and of the person who may be being harmed (if not the complainant)
- Evidence of the complaint such as screenshots if able to be provided and URL
- A copy of any image that may be the cause of concern
- Written description of the material that is the cause for concern.

It is important that age verification only be used to assess risk and capacity to engage with the scheme effectively, not to limit access to the scheme.

A complainant should be provided with an immediate response from the Commissioner about receipt of the complaint including avenues through which immediate support may be accessed (e.g. Kids Helpline).

No response

*The QCEC ICT Subcommittee suggested as part of the evidence to support the complaint, the following would be recommended:*

- *A link to the offensive content (or screen shot or screen drag)*
- *An explanation as to the breach of the terms and conditions*
- *Evidence of the submission of the request for removal of the content to the provider*

**9. How would an eligible complainant demonstrate that the complainant has reported the content to the participating social media site?**

- screen shot of complaint lodged
- requiring sites to provide an acknowledgment or reference number which could be provided to the Commissioner.

See response to question 12

**10. 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?**

The timeframe should be a maximum of 24 hours or immediately upon receipt of notification if the content is extremely harmful. 48 hours is too long.

See response to question 12

*There is consensus that time is of the essence and feedback from the QCEC ICT Subcommittee also suggested that the response should be as soon as possible (e.g. less than one hour).*

**11. What level of discretion should the Children's e-Safety Commissioner have in how he/she deals with complaints?**

Reasonable discretion similar to that of other agencies. The Commissioner needs staff with knowledge and experience in working with children and young people and definitions and guidelines regarding content which is harmful to guide discretionary decision making.

No response

**12. What is an appropriate timeframe for a response from the social media site to the initial referral of the complaint?**

24 hours or immediately upon receipt of the notification if the content is extremely harmful. If the matter cannot be responded to within 24 hours, the complainant should be advised of the reasons for this and an estimated timeframe in which the matter would be resolved.

It may be useful to develop a set of agreed guidelines which categorises the levels of significance in relation to harmfulness of the content and grade the timeframes for management accordingly.

In addition, a mechanism should be established to monitor and follow-up if a response has not been actioned within 24 hours.

We would like to see an immediate removal of the offending item by the social media site whilst the report is investigated. This would involve a technical solution linked to the reporting function on the site. Due to the rapid nature in which social media is shared, time is of the essence. An item deemed to be appropriate may easily be reinstated.

*The QCEC ICT Subcommittee also concurred that where children are at risk a fast, almost immediate, response time is critical and would prefer this be less than one hour.*

**13. 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?**

The limitation of a 'participating site' is problematic if the goal is to improve the online safety of children in Australia. A notification to any site about which a complaint has been lodged is required to improve online safety of children.

Posting by a third party would limit the ability to address the initial post of a 'selfie', which can result in significant harm to a child or young person. This approach potentially penalizes a child whose developmental capabilities may have impaired their decision making.

Any sexually explicit material should be a factor considered in the statutory test.

Any material relating to racial hatred should be a factor considered in the statutory test.

It may be useful to include a set of principles similar to the 10 new communication principles in New Zealand's *Harmful Digital Communications Bill* to guide the Commissioner and agencies.

See response to question 14

**14. Is the test of 'material targeted at and likely to cause harm to an Australian child' appropriate?**

Yes, but only if a clear process is in place to enable information about children from other than Australia to be passed onto a relevant authority by the Commissioner for follow up.

The test needs to include consideration of the context in which the material occurs. There may not be an immediate link to the child in question such as their name or other identifying elements. An example may be a child who was being called a "dog" within another context. The offensive material may include numerous pictures of dogs posted on the child's site.

**15. What is an appropriate timeframe for material to be removed?**

Within 24 hours. If the matter cannot be responded to within 24 hours, the complainant should be advised of the reasons for this and an estimated time in which the matter would be resolved. In the event the social media site determines that the material is not harmful, a rationale for this decision should be provided to the complainant along with possible avenues for review of this decision.

Immediately

**16. What would be the best way of encouraging regulatory compliance by participating social media sites that lack an Australian presence?**



Developing principles similar to the European initiative of the *Safer Social Networking Principles* which have been agreed to by 20 leading SNS providers and auditing against the principles and communicating publicly about the lack of safety of a particular site/ a sites breach of the agreed principles.

Unable to comment.

**17. 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. As per the New Zealand safe harbor provisions, it seems reasonable that a SNS not be liable for content they host unless they have received a complaint about the content and failed to take reasonable steps to remove it.

**18. 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? What are the alternatives?**

Yes. Merits review by the AAT is the appropriate review mechanism in relation to decisions both as to whether the scheme applies, secondly determining whether the material the subject of the complaint meets the test for material targeted at and likely to cause harm to an Australian child, and the decision to issue a direction to remove the material.

**19. 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 applicable.

**20. 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?**

Yes. Plain English terminology, able to be understood by children and parents alike is required. Given the education provided to children using the terms "bullying" and "cyber-bulling", particular offences which refer to "cyberbullying" should be enacted.

**21. Is the penalty set out in section 474.17 of the Criminal Code appropriate for addressing cyber-bullying offences?**

Generally, no. Many offences will be committed by minors and therefore it is unlikely that a Court would impose penalties towards the upper end of the very wide range of penalties under that section (up to three years imprisonment or a fine of \$30,600). It is suggested that a more realistic

range of penalties be developed for behaviour which sits in the less offensive category of behaviour which graduated penalties for more serious offending.

**22. Is there merit in establishing a new mid-range cyber-bullying offence applying to minors?**

Yes, although consideration should be given to the requirement for such offences to be more than a “one off” incident. It would be anticipated that the majority of cyber-bullying offences where the victims are minors will be committed by minors themselves. For this reason, a wider range of available penalties, which include penalties which improve education for the offender about the about the consequences of cyberbullying for the minor victim would prove valuable.

**23. Is there merit in establishing a civil enforcement regime (including an infringement notice scheme) to deal with cyber-bullying?**

Yes. This would be a better option for minors who have engaged in cyberbullying. A process similar to youth justice conferences would be beneficial as it can include an educative component i.e. understanding the impact on the victim etc.

**24. What penalties or remedies would be most appropriate for Options 2 and 3?**

Fines or community service in combination with developmental approaches such as models like youth justice conferencing or restorative justice processes may be suitable.

## Contact

### **Liam Garvey**

Executive Officer – Information and Communication Technologies

Queensland Catholic Education Commission

(07) 3336 9207

[liamg@qcec.catholic.edu.au](mailto:liamg@qcec.catholic.edu.au)

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<sup>i</sup> European Commission. 2009. *Safer Social Networking Principles for the EU*, 10 February 2009, 2.

<sup>ii</sup> De Zwart M, Lindsey D, Henderson M, and Phillips M. 2011. *Teenagers, Legal Risks and Social Networking Site*. Monash University.