

Enhancing Online Safety for Children

Public consultation on key election commitments

January 2014

Submission by the South Eastern Centre Against Sexual Assault

PO Box 72  
East Bentleigh  
Victoria 3165  
(03) 9928 8741

### **Background.**

The South Eastern Centre Against Sexual Assault (SECASA) provides services to children and adults, both female and male, who have been sexually assaulted or are victims of family violence.

The service operates in the south eastern suburbs of Melbourne, covering the Mornington Peninsula, Westernport and the Dandenong, Berwick, Cranbourne and Pakenham growth corridors.

SECASA is a member of the Victorian Centre's Against Sexual Assault Forum which is the peak body for the sexual assault services in Victoria.

We provide the following services;

- 24 hour Crisis Service.
- Counselling
- Short, medium and long term counselling
- Urgent medical care and follow-up
- Legal Clinic for criminal injuries compensation
- Reports for court and tribunals
- Community and professional education.
- Advanced personal safety primary school program Feeling Safe Together
- Secondary school peer educator run respectful relationships program Respect, Protect, Connect
- Groups for adult, children and adolescent survivors, care givers and partners.
- Art for recovery groups.

The AWARE program provides the assessment and treatment of children and youth, 10 to 17 years of age, who have engaged in problematic sexual behaviour or sexually abusive behaviour.

The Making Rights Reality program for victim/survivors with a cognitive impairment and/or communication difficulties provides additional support to assist this client group to engage with the criminal justice system.

There is a cyber outreach team for online support, consultation and community education. Our online presence includes 3 websites, a phone app for the anonymous reporting of sexual assault, pages on 7 social networks and a helpdesk on 2 community driven knowledge markets.

In 2011 SECASA produced its first information about sexting. While sexting can be understood in the context of adolescent sexual exploration, there is a fine line between exploration and exploitation and the sexual objectification of women and girls. Like patterns of sexual assault generally, sexting has a gender bias as it is mostly images of young women that are being distributed. It is also young women who are being labelled and judged by their peers and broader society for engaging in sexual behaviour in the first place rather than a simultaneous focus on (both males and females) who send on the original messages. SEXTS reinforce the objectification of women and girls.

A Google search of the definition of sexting is "n00dz: Generally, a single or set of pictures containing an ass, tit, or vadge shot of a female. The lesser known "male n00dz" are less sought after, and hold less value when willing to trade." (From SECASA sexting information pack 2013 <http://www.secasa.com.au/pages/respect-me-dont-sext-me/>)

Due to demand from schools, we expanded our original material in consultation with the Department of Education and Early Childhood Development (DEECD), Victoria Legal Aid and the Eastern Community Legal Service into a Sexting Information Pack. Two copies of the Pack were distributed to 1539 Government, 487 Catholic and 215 Independent Victorian schools in April 2013.

SECASA is currently working with other organisations to create educational resources about the harmful effects unrestricted consumption of pornography has on children and young people. We are also in discussions with DEECD to run a pilot project to tackle the effects of sexting and pornography in Victorian schools.

When talking about young people it is important to remember that:

1. The adolescent brain is still developing. Young people may be impulsive, focused on the present and likely to take risks. They are more likely to dismiss risks that they know about, thinking 'It won't happen to me'. They are capable of making good decisions, but do not always do so. (From SECASA sexting information pack 2013).
2. They must foster connections in real world. By putting the emphasis on computers or websites we are neglecting what is most influential in their life which is their real world environment of home, family and real world relationships.
3. Programs must not de-skill parents by emphasising unfamiliar websites and technology instead of the need for family values and respectful relationships.

4. Young people see devices such as phones and the internet as a part of themselves and their status such as the car an adult drives or their clothes. The way young people participate in these sites or use their devices is also status oriented. Change will come about only if the status is changed.

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

The commissioner should not take over powers of the Australian Federal Police (AFP) because the AFP currently has well established links with international law enforcement organisations which are seen as separate from policy.

The Australian Communications and Media Authority (ACMA) should keep their cybersmart material because it has already been developed. The Commissioner should establish a process to assist schools to deliver education programs. There is a need for the delivery of education not just about cybersafety but about being good cyber citizens. This education needs to be delivered face to face to both children and parents. The cyber messages need to be delivered in conjunction with respectful relationship programs to combat bullying and violence against women. It has been our experience that both teachers and parents feel ill-equipped to do this. While having police involvement in the education process can be helpful, many children do not absorb the safety and respect messages as well, only the messages about the law and legal retributions.

In our opinion there needs to be an established curriculum covering cyber safety, digital citizenship and respectful relationships. This needs to be funded to enable schools to hire in expertise to deliver these programs.

The Commissioner needs powers to influence private industry to implement strategies such as Telstra's smart controls to enable parents to have more control over what websites and material their child is able to access. The availability of these should be mandatory at no extra cost to the consumer.

We believe the Commissioner needs the power to instruct ACMA to blacklist websites of people who do not agree to abide by take down notices.

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

ACMA already has the cybersmart programs and infrastructure to issue take down notifications or block websites. It is an Australia wide initiative consequently we think expanding ACMA's role to include this Commissioner would be logical.

Q3 Are these definitions of 'social networking sites' suitable for defining 'social media sites' for the purposes of this scheme?

The definitions are too narrow. They do not cover phone apps like KiK or Snapchat or sites that are not specifically social media such as games, online video sites like Chat Roulette or VOIP technology like Skype. Technology changes quickly so it is more important to focus on culture. There are many ways that children (and others) bully or intimidate others which are not covered by the definition.

- Memes (photos with comments).
- Taking videos or photos without permission.
- Sharing videos or photos without permission.
- Threatening to share private or embarrassing videos or photos.
- Reporting someone's page until it is deleted and the author's account suspended. This is often done out of spite, not due to page content.
- Sending unwanted photos or videos, usually of male genitalia using apps like Tinder (<http://www.gotinder.com/>).

It also does not cover self-uploads or question-and-answer-based social networking services like Formspring (<http://new.spring.me/>).

We need to focus on the causes of bullying and online risk taking behaviour such as raunch culture, body image (particularly for girls/women), glamourizing violence in popular media and easy access to degrading and violent pornography online.

In addition there is usually more than one person involved. People may bully without realising the impact of it for instance;

- Sharing a hurtful meme
- Defriending someone on Facebook
- Liking a hurtful page on Facebook
- Spreading gossip
- Liking a hurtful comment on Facebook
- Doxing (<http://www.mamamia.com.au/social-media-2/doxing-someone/>)

We need to bring the messages of respectful relationships as well as cyber safety into schools.

It is very easy to create a new page if an existing page is taken down. Playing cat and mouse with authorities becomes a game for children. An example is a page on Facebook that was set up by a 15 year old. She used it to disseminate gossip about school children, much of it hurtful, to other school children until it was taken down. The following day the same girl started up a new page which is doing the same things and is currently in operation.

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?

Why only large social media sites?

The issue is not just social media sites. There are a range of technologies being used to bully and harass people. These technologies will change over time. The Commission needs to focus on presentation through education and consequences for adults who are modelling this behaviour.

Q6 Is the coverage of social media sites proposed by the Government appropriate and workable?

No. It does not include the full range of technologies being used to bully and harass people.

By focusing on large social media sites it side steps many of the other types of bullying such as boys sending their girlfriends 100 texts per day asking where she is and who she is with. Boys installing applications like 'Sniperspy' on their girlfriends' phones. This turns a mobile phone into a remote surveillance device. This is the same technology parents are using to monitor their children's phone usage. There is little emphasis put on the anti-surveillance legislation and that it is illegal to install this software without the consent of the user.

There is a trend to devalue violent words such as 'rape' eg online *rape face* competitions which needs to be addressed in the online environment, not just officially.

It is not just a Commissioner we need to police this type of behaviour. We also need to encourage everyday citizens to take an active interest in monitoring and curtailing anti-social and violent behaviour.

The proposed changes to the NSW Consumer and Completion Act which would deny people's right to sign petitions boycotting products in order to voice their anger at a company's actions and hold them accountable (see <http://laurelpapworth.com/laws-to-stop-customers-and-voters-from-doing-socialmedia-activism-campaigns-tpp/>) will also prevent people from voicing their opinion about bad behaviour on sites like Facebook. Some examples are petitions asking Facebook to take down racist pages, child pornography pages and spot your ex pages. In the commercial sector there have been petitions protesting things like the 'Diva' range of products selling raunchy underwear to young girls.

Citizenry action also needs more support in efforts to dox (expose) Trolls (people who deliberately harass online users). In a recent article, Chrys Stevenson (<http://thatsmyphilosophy.wordpress.com/2013/05/14/due-credit-to-devenys-detractors/>) wrote about how fellow blogger Catherine Deveny was targeted by hateful comments. If these same comments were spoken to her face to face, she may well have been able to take legal action. There needs to be swift and commensurate action taken against people who Troll and post violent messages regardless of if they are children or adults. Children see adults getting away with these violent messages and follow their examples.

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?

The scheme needs to include the assigning of counsellor/advocates to both the victim and the perpetrators of bullying. Focusing only on the victim and taking down of webpages will not resolve the core problem which is a lack of empathy and clear directions on respectful relationships. Often there are underlying issues for both the victim and the protagonist. We need to encourage an environment of resilience. There may be larger issues such as lack of self-esteem, family violence or sexual assault for both victim and perpetrator.

There is also an assumption of only one perpetrator. What if it is many? Law enforcement should also set a good example by doxing Trolls in a very public way.

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?

Have the complainants attend a police station to make the complaint.

Q9 How would an eligible complainant demonstrate that the complainant has reported the content to the participating social media site?

As a matter of course the authority should put in a complaint to the media site to ask for the page to be taken down. Take down notices from individuals are often ignored by site administrators as are emails and phone calls.

It should be up to an adult to report the site. The onus should not be on the child to prove that they have reported. In no other legal sphere would a child be expected to have to prove that they have made a documented complaint to the authorities.

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?

Every hour an item used for bullying is online the problems associated with it increase eg more people copy it, more people share it. 24 hours is plenty of time for an automated system to remove material. The pages can be placed into a suspension mode not deleted until the online material has been viewed. Alternately if reported pages are automatically deleted because of bullying then over time the threat of having one's page taken down will cause the behaviour to be modified.

Q11 What level of discretion should the Children's e-Safety Commissioner have in how he/she deals with complaints?

Q12 What is an appropriate timeframe for a response from the social media site to the initial referral of the complaint?

24 hours - they are able to deal with complaints from commercial enterprises very quickly.

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?

There have been cases where a child has uploaded images of themselves to their own private section of a social network page. This page has then been accessed by a third party who has then released the images.

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

No. What if it is targeted at the child's parent or other family member and this is being used to bully the child? An example would be a picture of a child's mother with mean words on it or sister with a 'bang factor' rating on it.

Q15 What is an appropriate timeframe for material to be removed?

Q16 What would be the best way of encouraging regulatory compliance by participating social media sites that lack an Australian presence?

Lack of compliance by social media sites could be given a bandwidth throttling penalty. The sites would run more slowly. People will be less satisfied with them and may migrate to another site which is faster. Throttling can be imposed if the site gets above a 5% non-compliance with take down requests.

As a last resort, they should be threatened with black listing by ACMA which will prevent all Australians from accessing their site.

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, the NZ system sounds good.

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? What are the alternatives?

When dealing with children, it would be good to have a community based arbitration system, similar to community mediation initiatives. This way if a repeat bully comes before the committee steps can be taken to impose a range of responses.

Counselling services for both victim and perpetrator/s can be put in place to support and assist in dealing with the behaviours.

Bullying is a problem with relationships and interaction between people, not an intentionally criminal behaviour like stealing a car.

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?

If you incorporate some of the suggestions into already existing structures there will be cost savings. There are already studies that show the cost of violence against women and children and what this costs the community.

6 cases of workplace bullies cost almost \$1 million in settlement expenses and increases in work cover premiums. (<http://www.theage.com.au/articles/2004/10/06/1096949587170.html?oneclick=tru>)

Violence against women and their children cost the Australian economy an estimated \$13.6 billion in 2009. (<http://www.secasa.com.au/pages/research-statistics/cost-of-violence/>)



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?

We support option 1. We don't believe that there is any need to amend the current criminal laws.

We believe that there needs to be education targeting the root causes of bullying to do with respectful relationships. Particularly with children, threats of legal consequences do not seem to have as great effect as we have found with our education program about sexting in schools. It is much more effective to target key contributing behaviours. This also needs to be broadened out to a societal level and to support online endeavours to control the anti-social and disrespectful behaviour of adults.

Q21 Is the penalty set out in section 474.17 of the Criminal Code appropriate for addressing cyber-bullying offences?

Q22 Is there merit in establishing a new mid-range cyber-bullying offence applying to minors?

No. We believe this will have little effect as a deterrent. If the current one has not acted in this way then why would an extra level make a difference? Also, usually society prefers to deal with minors by educating them.

Q23 Is there merit in establishing a civil enforcement regime (including an infringement notice scheme) to deal with cyber-bullying?

Yes. There is merit to having an infringement notice being sent to the offender. It would be good to have this include the offenders' parents or guardians so the anti-social behaviour is flagged and can be addressed.

Ideally this behaviour should be addressed with education. Instead of a fine, offenders (and perhaps their families) should be made to attend classes on respectful relationships.

Q24 What penalties or remedies would be most appropriate for Options 2 and 3?